DOYLE, JOHN THOMAS. In the international arbitral court of the Hague. The case of the Pious fund of California. Statement of the proceedings and letter to the most Reverend P.W. Riordan, archbishop of San Francisco, Cal., by John T. Doyle, for forty-five years chief cousel for the claimants. San Francisco; Geo. Spaulding & Co. printers. 1906
106 pp. 23.2 cms.
This unusual document was rigidly suppressed.

These copies were more rigidly suppressed as they contained the addenda of the Pious fund case in the matter of the distribution of awards including the fees of counsel covering 67 pages unknown to Cowan. (McCowan ad 1933 p.180)

N.B. This note was in the book when it was obtained at Newberry's

N.B. Additional Document
after p. 106

IN THE

INTERNATIONAL ARBITRAL COURT

OF THE

HAGUE

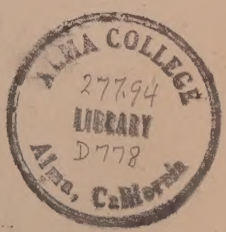
The Case of the Pious Fund of California

Statement of the Proceedings and Letter to the Most Reverend P. W. Riordan, Archbishop of San Francisco, Cal.

BY

JOHN T. DOYLE

For Forty-five Years Chief Counsel for the Claimants



SAN FRANCISCO
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1906

THE PIOUS FUND CASE.

STATEMENT OF FACTS.

In the winter of 1853-54, Archbishop Alemany brought me a bundle of papers, which he had recently found in his safe, derived from his predecessor in office, consisting of copies of letters, etc., the reading of which had led him to suppose that he had perhaps a valid claim against the United States for a considerable sum. I read the letters and two or three Mexican pamphlets that were in the bundle, and advised the Archbishop that I could see no grounds for a claim against the United States, but thought there might be a valid claim against Mexico for what was known as the Pious Fund of California. The existence of such a fund in that country was known to all the old inhabitants of the State, although none appeared to have any definite information about it, and even a legislative investigation in 1851, had failed to bring anything material to light about it. I saw no probable way to obtain anything from Mexico for it, until another claims convention should be made with that country, and advised the Archbishop to wait, in hope of such. In the spring of 1857 he called on me again and recurring to the Pious Fund claim, wanted to engage the services of Mr. Casserly and myself to endeavor to recover something for it. I was about to depart for New York, to join a firm in the practice of law in that city, but as the Archbishop pressed the case on us, and offered us as a fee twenty-five per cent on what might be collected, I told Mr. Casserly that he might sign my name, with his own, to such a contract as the Archbishop proposed, and, with that, I left on the steamer bound for Panama.

I afterwards learned from Mr. Casserly that he had arranged the contract, on the terms proposed by the Archbishop, and that it had been agreed to by Archbishop Alemany and Bishop Amat. It reads as follows:

"*Most Reverend Joseph S. Alemany, Archbishop of San Francisco*:

"MOST REVEREND AND DEAR SIR:—In a matter of such "importance and magnitude as the effort to recover the Pious "Fund promises to be, we feel assured we will consult your "wishes in reducing to writing the understanding on which "that business is undertaken by us, more especially as it is "not improbable that a long time may elapse before the col- "lection of any money would give occasion to recall to mind "our conversation.

"We understand we are to use our best efforts to reclaim "and obtain for yourself and Bishop Amat the Pious Fund "of the Californias from the Government of Mexico or that "of the United States, or any other, or to obtain compensa- "tion or indemnity for the confiscation of such property; and "that we shall advance and pay out all such sums of money as "may be necessary to meet the expenses we shall incur in the "prosecution of the demand. In case nothing is recovered "and received, we are to make no claim on yourself or Bishop "Amat, or your successors, either for money disbursed or "services rendered.

"Whenever any money or valuable thing shall be recovered "and received it shall be applied first to the reimbursement "of the expenses which we shall have paid or incurred, and "after these are repaid, we shall receive or retain for our "compensation one-fourth part of the residue. The other "three-fourths thereof shall be paid to yourself and Bishop "Amat, or your successors or to such other persons as you "may direct or to whom the same may be adjudged. We, on "our part, are to be at liberty at any time, when the expense "shall appear too great, or the probability of obtaining any "favorable result too small, to discontinue the further prose- "cution of the claim, losing our labors up to that time.

"You and Bishop Amat, on the other hand, shall not be "responsible to us for payment of disbursements incurred, or "services rendered or procured to be rendered, by us unless "in the event of your actually receiving money or property; "and if hereafter in the progress of the affair your superior "ecclesiastical authorities, or a sense of duty on your part, "should compel you to transfer your legal rights to some "other ecclesiastical person or body, you and Bishop Amat "shall not remain personally responsible to us for services "or disbursements. In such case, you and he will exercise "such influence as you may have to cause the transferees to

" acquiesce in and recognize this engagement, and in case " they should refuse to do so, will do no act to impair such " claim as we may have, on the fund itself or on its future " representatives or owners."

This was signed by Mr. Casserly for himself and for me as my attorney, but no copy of this was sent me, and I never saw a copy of it for many years afterwards.

In 1868 Mr. Casserly was elected to the United States Senate from this State, and in 1869 took his seat. Down to that time I had, after every session of Congress, examined the laws and treaties to see if any convention for claims had been concluded with Mexico, but after the election of my associate to the Senate I naturally relied on him for such information; but he seems to have forgotten in the multiplicity of political business all about the Pious Fund, and I was ignorant of the Convention of 1868 until the 27th of March, 1870, when I casually saw mentioned in a New York paper that Wednesday, the 31st of that month, would be the last day for presenting claims to the American and Mexican Mixed Commission, sitting in Washington.

I was at the time in the country. Returning to the city next morning by the first train, I examined the convention with Mexico of 1868 and found that its wording was such that the claim for the taking of the Pious Fund would not be cognizable under it. I read the treaty several times to see if there was not a way to bring the claim within it, but saw none. The Archbishop and Bishop Amat were both away in Europe, and the government of the diocese was left with the Vicar General, Mr. Croke, who, as I learned from himself, knew nothing whatever of the affair. The convention released Mexico from all demands against it not presented to the Joint Commission by the 30th, or 31st, of March, 1870, so I was driven to the election between presenting a claim in some form before the following Tuesday, or abandoning it and allowing the right to lapse. There was no time to deliberate or consult anybody. My clients were absent; I was without authority and it was already Monday afternoon in Washington. I decided to take the responsibility of waiving the tort, which we had always regarded as involved in the taking of the Pious Fund by the Mexican Government, and making my demand in *assumpset* for non-fulfillment of their promise to pay interest at six per cent on the amount of the proceeds of the property, treating that promise as made to the church. I accordingly sent to Mr. Casserly a telegram in the following words:

"Present to Joint Commission sitting in Washington a " claim by Archbishop Alemany and Bishop Amat, successors " of Francisco Garcia Diego, Bishop of the Californias, on " behalf of themselves and all interested, for the income of " proceeds of property belonging to Pious Fund of the Mis- " sions of California. The Fund arose entirely from private " contributions, beginning with a donation to the Jesuits by " Marquis of Villapuente in 1735, upon trust for the main- " tenance and propagation of the faith in California. After " 1767 it was administered by trustees, appointed first by " the Crown, afterwards by the Republic. The sixth session " of Mexican Congress, September 19, 1836, gave adminis- " tration to the Bishop aforesaid, to whom claimants respec- " tively succeeded. It was taken from Diego's possession " by Santa Ana's decrees February 8, and October 24, 1842, " both of which acknowledge and promise to fulfill the trust. " This claim first became due American citizens by treaty " Queretaro, whereby both trustees and beneficiaries became " Americans. Amount is three millions or so. All rents and " proceeds received since February 2, 1848, fall within Con- " vention of July 4, 1868; prior spoliations perhaps released. " Thursday is last day. John T. Doyle."

As this was a total deviation from the employment we had accepted from the prelates and might not be understood by Mr. Casserly, I deemed it prudent to have some sort of authority from the Church for the act, and therefore requested Father Croke, the Vicar General, to countersign it, which he did. That telegram reached Mr. Casserly, and in obedience to it he submitted the claim in the form sent and in season to save the limitation of time. That telegram and that alone saved the Pious Fund from total loss by lapse of time. I was, of course, aware by this course I perhaps sacrificed my compensation contracted for, but that never caused me a second thought, for it was the only way I saw to save the case, and that it did. The clients were entirely satisfied with my proceeding, and the Archbishop expressed cordially his gratification at it.

I began the exploration and study of the Pious Fund case and its history, reading everything I came across about Mexican travel and legislation. I alone made the investigation and discovered and adduced the evidence for the claimants of the income of the Pious Fund, before the American and Mexican mixed commission constituted by the convention of

1865; but Mr. Casserly after his election to the United States Senate underlet his portion of the work in it, first to Mr. Wilson and afterwards to Messrs. Wilson and Phillips. In that case we recovered a judgment against Mexico for $904,070.79, being twenty-one years' interest on half the capital of the Pious Fund, at six per cent per annum.

In 1882, and again in 1883, it was proposed to me by Archbishop Alemany to take steps to collect from Mexico further installments of the interest on the Pious Fund. I wrote him, pointing out some difficulties which arose from the wording of our former contract, and which I wished settled first and leaving the settlement to him, so it was not until 1884 when he renewed his request for further efforts in the Pious Fund case, and I again insisted on his deciding the unsettled question mentioned in my letter in 1883, that he gave me an answer, and thereupon engaged me for such further effort. It was agreed that the compensation of myself and my associate, whom I was to select myself, was to be the same as in the former case, viz: 25 per cent of all collected, and that the clause about disbursements which had led to a little difference in the former case should be slightly changed.

I mentioned the possibility of Mexico's ceasing further payments on the former award if we commenced proceedings immediately, and whether from this suggestion or from some other, the Archbishop determined to call together his coadjutor (Archbishop Riordan), and the Bishops of Monterey and Grass Valley, for consultation before proceeding further. I was invited to and attended their meeting, which was held at the Archbishop's residence. Archbishop Alemany laid the matter before the gentlemen present, and I was requested to give an explanation of the Pious Fund case and its *status*. The arrangement between the Archbishop and myself for making further demands on Mexico was stated, and the question of the prudence of immediate proceedings propounded. Questions were asked me and discussion ensued. They decided that it would be better to postpone action, and, in fact, nothing further was done about it until 1889.

In 1885, Archbishop Alemany surrendered and turned over to Archbishop Riordan the administration of the archdiocese, while he himself was translated to another, and retired to Spain. In 1886, at the request of Archbishop Riordan, I prepared and furnished him a written statement of the nature of the Pious Fund case, the litigation we had had about it, its *status*, etc., offering further oral explanation, if desired.

The last payment of magnitude under the award of the arbitral court created under the convention of 1868, was made in 1889, a small balance being left to be paid in 1890. After the payment of 1889 had been received, I was requested by Archbishop Riordan to prepare a written contract for services in the further demand to be made on Mexico in accordance with my understanding with Archbishop Alemany. I had, after much reflection, selected and secured the consent of Senator William M. Stewart, of Nevada, to act in conjunction with me and allocated one-half of the fee to him. I prepared the contract which was afterwards dated December 24th, 1889, between the Archbishop of San Francisco and the Bishop of Monterey on the one part, and Senator Stewart and myself on the other, which was executed by all the parties to it.

It is as follows:

"Memorandum of agreement between the Most Reverend "Patrick W. Riordan, Archbishop of San Francisco, a cor- "poration sole, and the Right Reverend Francis Mora, Bishop "of Monterey, also a corporation sole, for themselves and "their successors, and acting on behalf of the Roman Cath- "olic Church of California, of the one part, and John T. "Doyle and William M. Stewart, counselors-at-law, of the "other part, made the 24th day of December, 1889.

"The Republic of Mexico being indebted to the Roman "Catholic Church of California in a sum of about eight hun- "dred thousand dollars, for the unpaid installments of the "purchase price of the properties of the Pious Fund of the "Californias, which have accrued since the award of the "American and Mexican Mixed commission, created by the "convention between Mexico and the United States, of July "4th, 1868, the aforesaid prelates, successors respectively of "the Most Reverend Joseph S. Alemany, and the Right Rever- "end Thadeus Amat, have employed and retained the said "John T. Doyle and William M. Stewart, professionally to "endeavor to secure payment of the money so due to the "Church of California as aforesaid, by legal proceedings, "diplomatic action, or other lawful means, and have consti- "tuted them and each of them their attorneys for that pur- "pose.

"It is agreed that they are not, nor is either of them, to "make any charge or demand any compensation for his serv- "ices except out of the moneys or property to be actually col- "lected and recovered from Mexico, and that of all that shall "be collected and received, whether in money or valuables,

" and whether received in full or partial payment, or in com-
" promise of the claim, each of the said attorneys is to receive
" one-eighth part, as compensation for his services and any
" disbursements he may make, in or about the business. It is
" also understood that this contract is with each of said attor-
" neys severally for his personal services and for his indi-
" vidual compensation; if they deem it best to employ asso-
" ciate counsel, they may do so, but at their own expense. If
" either of them should die before the recovery of the money,
" or settlement of the claim, no right to continue the work and
" earn the fee shall survive to the personal representatives
" of said deceased, but in the event last supposed, the eighth
" part of the sums collected, that would have gone to the
" attorney so deceased, shall be at the absolute disposal of the
" prelates, for the employment of one or more other attor-
" neys or counsel in place of the one so deceased. If after
" payment of counsel or assistance so employed, there should
" remain any balance of the eighth so appropriated, the prel-
" ates will pay it over to the personal representatives of the
" deceased attorney.

"IN WITNESS WHEREOF, the said several parties have
" hereto set their hands and the corporate seals of the said
" corporations the day and year above written."

Our first application to our Government on the subject was made early in 1890. It was transmitted to the Secretary of State by Senator Stewart. While Mr. Blaine was Secretary of State, we had reason to think that our claim would be actively pressed on the attention of Mexico, and possibly with some result. After he left office, he failed to make any material progress, either under General Harrison or during Mr. Cleveland's second term, and my colleague, Mr. Stewart, appeared to lose interest in the case. Archbishop Riordan, who acted throughout the litigation on behalf of the Bishop of Monterey, as well as himself, remarked to me on this, and thought Mr. Stewart ought either to exert himself more actively or resign and make room for someone else who would.

The state of the claim in the Department in November, 1897, will be seen from an examination of the diplomatic correspondence, the latest document in which then was Hon. Powell Clayton's letter of October 21st, 1897, and Mr. Sherman's of October 30th of that year.

On November 15th, 1897, Archbishop Riordan came into my office and, after the usual salutations, asked me "What can I, or what shall I, do with this man Stewart?" I knew that he

referred to Senator Stewart, and to his supposed inactivity in the Pious Fund case, at which he had before expressed dissatisfaction. We discussed that subject and after some conversation on it, concluded that the proper way would be for the Archbishop to write the Senator a letter, intimating his dissatisfaction and inviting him to resign his connection with the case. The Archbishop then requested me to prepare such a letter for his signature. I begged him to excuse me; I told him I was entirely too direct and blunt; and was much more likely to give offense than win consent in such a case; and that he was himself the best person to write it. He, however, insisted, and I at last with very great reluctance agreed to draft such a letter and submit it to him. With that we parted. Within a few minutes—less, I think, than three—he returned, accompanied by Senator Stewart, saying, "I met this gentleman at the foot of the elevator and brought him right up with me to discuss that matter." I was taken entirely by surprise, and had not a moment to consider how to approach the subject without wounding the feelings of my associate. In something like despair, I decided to share the blame of the default myself, and so I told the Senator that the Archbishop was dissatisfied with the slow progress *we* had made in the Pious Fund case and thought that not having ourselves succeeded in moving our own Government to activity, *we* ought to set him free to employ other counsel who might be more efficient in that direction than we had been and more to that effect. Somewhat to my surprise and much to my relief, Mr. Stewart at once assented and expressed his willingness to comply with the Archbishop's desire. I said that this ought to be expressed in writing to which he assented, and thereupon I wrote a letter to the Archbishop intended to express the idea, and read the same aloud. It was approved by both the Archbishop and Senator Stewart; it was typed at once and signed by both Mr. Stewart and myself, and delivered to the Archbishop. It reads as follows:

"In respect to the effort to recover the arrears of interest
" on the Pious Fund of California from Mexico, we both
" agree that the twenty-five per cent of the sum realized
" heretofore contracted to us, shall be appropriated to the
" payment of all professional services in the case, and in as
" much as it will be needful to engage other counsel, and
" probably to incur other unforeseen expenses, we agree that
" the employment of such persons and the incurring of such
" expenses, and the consequent application and division of

" the twenty-five per cent mentioned, shall be left to your " determination, whenever a conclusion is reached, or a reali- " zation is effected. Our several contracts with you and the " Bishop of Monterey, will therefore be modified as above, " and this letter is addressed to you on his behalf, as well as " your own."

I may say here, once for all, that during all the forty years that I was in charge of this Pious Fund case, neither the Archbishop nor the Bishop of Monterey ever expressed or intimated the slightest dissatisfaction with my efforts or conduct in the case, or gave me any reason to doubt that they had entire confidence that I was doing all in my power to bring it to a satisfactory conclusion. The Archbishop always spoke to me in the most confiding manner about it, and during the long period I had it in charge as his chief and most trusted confidential adviser, a relation of great intimacy, confidence and, as I supposed, of friendship, grew up between us. He was a frequent visitor at my house, and consulted me freely and confidentially about many other matters and transactions of importance wholly disconnected with this. He was quite aware of the sacrifice I made in taking on myself a share of the blame for our ill success in moving our own Government to action in the case, and should, I thought, and still think, have sufficiently appreciated the act to promptly write me a note declining to accept such sacrifice on my part, while reserving his decision as to the case of Senator Stewart, to whom he attributed the blame. He did not do so, and I had then such unbounded confidence in his justice, candor, integrity and honor that I did not ask him to. I have, however, since learned from his own course that rules which would control the dealings of gentlemen and friends are not deemed applicable in cases where an Archbishop is one of the parties.

The Archbishop made no use of this power (whatever its extent or scope) for three years after it was given, during which time he was unable to decide what he would do or whom he should employ, though he had talked with me frequently on the subject, and we had exchanged many letters about it. The names of several were suggested, but none seemed to fill the bill.

In August, 1899, the Archbishop was about to depart for a visit to Europe, stopping in Washington to attend an assembly of all the Catholic prelates of the United States, and I thought it might be a favorable opportunity to press our claim on the attention of our Government and to enable him

to explain the case accurately to his colleagues in the council, which he was not able otherwise to do, I prepared for him at his request, a letter to be addressed to himself outlining the claim, its history and amount due at the time (Oct. 24th, 1899). I enclosed copies of certain printed documents which were on file in the State Department and which in my opinion established our claim as *res judicata*. .

After attending the council in Washington, he went to New York, from which place he wrote me before sailing for Europe, that before we could engage additional counsel, an understanding should be reached with Senator Stewart; that he (Mr. Stewart) had left a letter in Washington for him (the Archbishop) in which he stated that he had secured the services of two gentlemen who were working very industriously in the case, and with hope of success, one a Mr. Ralston, a lawyer in Washington, that he intended to call on Mr. Ralston, but that acting on the advice of Mr. McEnerney, whom he met there, he had not done so. He wrote further, "Evidently Sena-" tor Stewart considers himself as engaged in the case, and " his *status* must be determined before we can take any steps " to go on with the suit without him. Mr. McEnerney under-" stands the situation and will explain it to you *viva voce* " when he returns to San Francisco. From conversation " with men of prominence in Washington and Baltimore, I " am satisfied that we can win, provided the right man can " be secured to look after our interests. He must be either " in New York or Washington. I think that I have such a " man in mind, and when we get rid of Mr. Stewart & Co. or " effect a compromise with him, I will come East, and engage, " with your consent, his services. I shall have then to remain " here a few months, very little can be done in a week or " two."

About the same time I received a letter from Senator Stewart intimating to me that he had secured the services of Mr. Jackson H. Ralston of Washington to aid him in the case, and under date of December 6th, 1899, I received a letter from Mr. Ralston himself about the case; I replied to this letter on December 13th, and declined to recognize him as an associate, saying "I learned from Senator Stewart that he had secured the services of Mr. Ralston in the case, but was unaware that he was acting for, or authorized by the Archbishop."

Immediately after the Archbishop returned to California I communicated to him all that had occurred with regard to the employment of Mr. Ralston, and from time to time there

after we discussed the situation. Meantime, Mr. Ralston was not inactive, and we were making some progress in the Department in Washington. The Archbishop for a considerable time was, as his correspondence shows, minded to consider that joint letter as a resignation on the part of Mr. Stewart, and had he been able to decide with any confidence upon some one to be named as successor, would, I do not doubt, have so treated it and proposed a new contract with such person and myself: but none of the names suggested quite satisfied him. This state of uncertainty continued down to November, 1900. On the 12th of that month, I casually met Senator Stewart and had a long interview with him, the substance of which I reduced to writing the same day, and communicated it to the Archbishop in a letter.

A few days after that letter, the Archbishop called on me and we had further discussion, as the result of which we concluded that no one should be employed in Mr. Stewart's place, but that Mr. Ralston should be recognized as associated in the case and as employed and to be paid by Mr. Stewart. I was asked to draft a form of letter announcing this result, and did so, but without waiting for it, the Archbishop on the 23rd of November wrote to me as follows: "I have delayed until "now to answer your letter of the 12th inst. which relates "to your conversation with Senator Stewart concerning the "progress made in bringing the Pious Fund to a solution "and the present *status* of it. I note with satisfaction that "after a long period of inaction the Hon. Senator has found "time to give this matter his attention.

"I do not think it advisable to engage additional counsel. "The case was undertaken by Senator Stewart and yourself, "and I must look to him and you for the management of it. "Should you (the Senator and you) deem it advisable or nec- "essary to bring in additional counsel, it will be for you to "arrange between yourselves for the compensation of him "or them whom you may employ. In your joint letter the "right is accorded me to employ additional counsel if I deem "it needful and compensating them out of the twenty-five "per cent appropriated for counsel fees, and you may rest "assured that the right given me will be used with discretion "towards all who have contributed to bring about the desired "result, according to their respective deserts."

This I made known to Mr. Ralston and Mr. Stewart, and thereafter recognized Mr. Ralston as an associate in the case and co-operated and communicated with him cordially and

confidentially, with the Archbishop's approval and consent.

From that time on we made rapid progress, and by Mr. Ralston's energetic action, our Government and that of Mexico, on May 22d, 1902, signed a protocol and agreed to submit our case for arbitration under The Hague Convention. It next became necessary to prepare and present a printed memorial for showing the origin and amount of our claim against Mexico, etc. I prepared such a memorial carefully and had it printed and signed by Mr. Sherman Doyle and myself as counsel for the prelates, representing the church. It was of course a very important document and was prepared with particular care. I sent fifteen printed copies of it to Mr. Ralston for presentation and service on the Mexican agent as required. I also sent several copies to the Archbishop, he must have read it carefully for while highly approving of it he asked for more copies and pointed out a typographical error which had escaped me. He also said that he considered that Mr. Stewart ought to sign it as well as myself and wished me to say so to him; in compliance with this desire I telegraphed "Strike out *new* page eight line five memorial; Archbishop thinks Stewart should sign."

About June 17th or 18th, 1902, the Archbishop, who had then quite lately returned from the East, where he had seen the gentlemen of the State Department, came to Menlo Park and, as usual, called on me. He told me of the recommendation of Mr. Hay that he should have eminent counsel to present the case at The Hague and his particular mention of Mr. Fred. Coudert of New York and Prof. J. Bassett Moore of Columbia University. I had known Mr. Coudert very many years, and we were both aware of his qualifications as a lawyer and a linguist and his considerable experience in international cases. The Archbishop said that he had called at Mr. Coudert's office, but learned there that the state of his health would forbid his undertaking our case. As to Prof. Moore, he felt a good deal of doubt about employing him, and had not tried to see him. He had sought some advice from Archbishop Corrigan as to the selection of a person and had been recommended by him, or by some one connected with him, to a gentleman whose name I cannot now recall; but he had not, I think, called on the person so recommended. It was some one I had never heard of, and, as we supposed, a local celebrity (and I imagine of very moderate celebrity). He asked me to name whom I would suggest. This I was unable to do and pointed out the impossibility of it, because as the nomi-

nations to the court then stood the members were an Italian, a Russian, a Hollander and an Englishman. Who could say what would be the language of the court, or in what tongue it should be addressed? The Archbishop's strongest ground for pressing the employment of additional counsel on the trial was the great influence of the "*living voice.*" I asked in what language the voice should speak? French was, of course, likely to be adopted as the language of the court; and, except Mr. Coudert, I could not recall the name of any French scholar to whom I would be willing to entrust the case, who was capable of conducting it in that language. In fact, I did not see how with a trilingual or quadrilingual court there could be any oral discussion beyond mere "explanations." I believed the case would have to be argued in writing, probably with translations. If oral discussion took place, I thought we would have to rely on local counsel.

With that, I think we parted. After an interval of a few days, the Archbishop returned and the subject was renewed. I was still unable to think of any one whom I would recommend, and, after a time, the Archbishop proposed Mr. McEnerney. I told him there was no lawyer in San Francisco to whom I would prefer to give the advantage of the employment, over Mr. McEnerney, but his selection did not in any way meet the difficulty. *He understood no other modern language than English.* Where would the "living voice" come in? *He replied that he did not want him to make a speech or an argument but there was an umpire to be selected and perhaps local counsel to be employed; that Mr. McEnerney had an excellent judgment of men and he wanted his aid in choosing an umpire, and in the selection of local counsel should such be required.* This showed me that, for reasons of his own, he wanted badly to take Mr. McEnerney with him, and was willing to put it on any ground, to secure my consent. Ever since the first nomination of arbitrators, and on both these visits to me, he was evidently quite frightened and nervous about the coming arbitration; so much so that I felt sorry for him, and consented, very much on that ground, to his taking Mr. McEnerney into the case and taking him to The Hague with him. I assumed and, as I still believe, correctly, that he had talked with Mr. McEnerney about the matter and learned from him that he would be gratified by being employed in such a historical case, but could not come into it without my consent. Almost immediately after thus getting that consent to his proposal the Archbishop rose and took his

leave. Having given my consent to his employment in the case, I volunteered to write and invite him, which I did, on the same or the next day.

Mr. McEnerney came to see me as proposed in my letter. I related to him orally and furnished him in print with all the information he ever obtained about the case, including translations of all the documents and other proofs, as well as the arguments of our counsel and opinions of the commissioners and umpire in the former arbitration under the convention of 1868, contained in the first volume of the proceedings printed by the State Department. He left San Francisco July 30th to join the Archbishop in Chicago and cross over in his company. They sailed from New York August 6th, and, after ten or twelve days spent, as I supposed in England, reached The Hague, I believe, August 25th. Thus, the circumstances and occasion of Mr. McEnerney's employment were in brief that on the eve of the Archbishop's departure for Europe to attend the sessions of the court at The Hague, he was engaged to accompany him; the object of his employment being distinctly *not* to make a speech or argument in the case, but to aid the Archbishop in the choice of the umpire and in the selection of local counsel, should such be desired. Knowing no language but English, there was little likelihood of his being able to communicate, except by signs, with any gentleman proposed as umpire or counsel, and his judgment of them, therefore, would have to be founded on physiognomy. The excuse of wanting his judgment on the umpire to be selected was a mere excuse, but the Archbishop was in a sad funk and I had pity on him.

The arbitrators appointed by the United States and Mexico and who composed the court, met at The Hague on the 1st of September to choose an umpire, and adjourned to the 15th to enable Mr. Matzen, who had been chosen as such, to accept the position and arrive at The Hague.

On September 15th, the court convened with President Matzen presiding, and after formally opening court, he announced that French would be adopted as its language, with the right for any of the parties to address it in English, which all understood, should they see fit to do so.

The order in which the speakers should succeed each other was, with Mr. Ralston as the official organ of our Government, and it was agreed by him that Senator Stewart should open the case, followed by Mr. McEnerney (who after being informed that the court could be addressed in English decided

to avail himself of the opportunity) and then by himself, the reply being reserved for Judge Penfield as the law officer and representative of the State Department.

The court was in session almost daily down to the 1st of October when the case was closed, and it then adjourned to the 14th of October to deliberate. On that day it met and a judgment was rendered in favor of the United States for all we had demanded, but made payable in Mexican money.

The Archbishop and Mr. McEnerney, as I was informed, left The Hague before the decision of the case was pronounced and spent some time traveling in Europe. They parted before reaching home, which Mr. McEnerney did, I believe, on the 6th of December, 1902, and the Archbishop about a week thereafter. I wrote to congratulate the Archbishop on his return, and not very long after he came to see me of a Sunday afternoon. We talked of indifferent things, but he abstained from saying anything about the Pious Fund or the result of the arbitration. I thought this silence singular, but at the time attached no special importance to it.

About a fortnight after that—another Sunday afternoon—he looked in again, and again surprised me by saying not a word about the subject we were both so deeply interested in, had so long and so frequently discussed together, and in which so important an event as the final decision had occurred. It was evident to me that he had some reason for not broaching the subject, and I naturally waited for him to open it.

I had foreseen the importance of settling the compensation of the parties who had played subordinate parts in the case, as early as possible, and especially before any payment by Mexico; and as early as December 26th, 1902, wrote to the Archbishop to enquire the amount of the charges of Messrs. McEnerney and Descamps. He replied on the 29th, that he had received a bill from Mr. Descamps for five thousand dollars; that he had not settled Mr. McEnerney's fee and would not without consulting me, adding "*I am coming to see you on the first opportunity.*"

A week later I received a note from him to say that he intended to come and see me the following Thursday, presumably to settle the amount of Mr. McEnerney's fee; but he did not come, nor did I hear from him, so on January 31st, I wrote him discussing the question of the fees of Mr. Descamps at length. I expressed the opinion that a thousand dollars was the most that should be paid Mr. Descamps and pointed out that the question regarding Mr. McEnerney's was not how

much he might reasonably pay him, but how much thereof should properly be charged to Mr. Stewart and myself. I had received the proof sheets of Mr. Descamps' speech (a most ridiculous performance), and speaking of it I said:

"The sum of five thousand dollars for Mr. Descamps' serv-
" ices, if expressed in American money, would be so very
" excessive—enormous, in fact, that I must presume he means
" to demand dollars of the same kind that were awarded us
" by the arbitrators; but even measured in such, it is, in my
" opinion, quite extravagant, for the following reasons.

"He made no original examination or study of the case,
" took no part in the preparation of it for trial, the deter-
" mination of what proofs should be adduced, or what line
" of argument taken. He had no responsibility as to the
" choice of the arbitrators, or the terms of the submission. All
" these things he found ready to his hand, and his whole task
" was limited to an extemporaneous discourse on *one only*, of
" the two questions presented by the protocol, by which the
" court was convoked. If a written opinion, supported by
" argument and authority, had been demanded for presenta-
" tion to the court, five thousand francs, or a thousand dol-
" lars, would have been an ample fee; and justified only by the
" magnitude of the demand, and the dignity of the tribunal.
" He discussed only the single question of the application of
" the doctrine of *res judicata* to the case at bar, and as to that
" his discourse, though of inordinate length, contained not a
" single novel or striking thought, suggestion, or illustration,
" nor did he cite any authority. It was really no satisfac-
" tory answer to Mr. Beernaert's argument, and its reading
" suggests the wonder that one could speak, so long, and yet
" say so little to the purpose. His own opinion of it may be
" gathered from a comparison of the stenographic report of
" the speech as actually delivered with his printed version
" of *what he would like to have said*, as inserted in the *pro-*
" *ces verbal*, after the case had been decided.

"A point in the case on which Mr. Descamps' knowledge
" of continental law and habits of thought might have been
" of material service to us, was entirely neglected by him, and
" greatly to the loss of his clients. I refer, of course, to the
" kind of money in which the recovery should be expressed.
" In this country we have become so accustomed to contracts
" for gold coin, or for currency, and to judgments recovered
" in either money, that we naturally assume the same famili-
" arity on the part of intelligent people elsewhere. Early in

" our correspondence, in this case, Mr. Ralston enquired of " me 'what have we to show to justify us in demanding gold " from Mexico? why can not she pay us in her silver money?' " In reply I referred him to Sir Edward Thornton's award, " which was for so many thousand '*Mexican gold dollars.*' " The *kind of dollars* intended being just as much *res ju-* " *dicata* as their *number;* which entirely satisfied him, as it " would, I think, any American lawyer. On the continent of " Europe, however, it appears that silver is almost univer- " sally looked on as standard money. The French call it " simply *l'argent;* the franc, the lire, the mark, and the rouble, " their monetary units, are only coined in silver, so that their " idea of *money* and *silver* are almost identical. A continen- " tal lawyer, therefore, should have appreciated the danger " of an award in that metal, and warned us earnestly of it. " He was properly the one to point out to the judges, whose " ideas on the subject he was familiar with, and probably " shared, that the naming of a particular kind of dollars, in " the judgment, went directly to the amount of the recovery, " just as the words 'sterling' or 'turkish,' after pounds " would; so that a recovery of coin of a particular kind " implied, distinctly, a debt due in that sort of coin. Mr. Des- " camps saw the danger, yet all he had to say on that point " was, in substance, that silver was a depreciated currency " and as Mexico was not called on for interest on arrears, it " was not just to permit her to pay them in depreciated " money. I cannot but think this neglect of duty on Mr. Des- " camps' part largely responsible for the error of the court " in giving us judgment in Mexican money. For the argu- " ment is very plain, and logically conclusive. *The word dol-* " *lar alone is no measure or expression of value.* There are " fully twenty different sorts of dollars in use as money, all " different in value. Mexico has two sorts, the silver dollar " and the gold one, of different values. Hence an award of a " number of *Mexican gold dollars* is a judgment for a differ- " ent sum from one of Mexican silver dollars, and the word " *gold* is an essential part of the definition of the sum awarded.

"Mr. Descamps' conduct on the hearing was not what I " think it should have been. It showed more desire to aggran- " dize his own position than to win the case, which should " have been his sole object. The United States was plaintiff, " and the delegation—I might almost say the embassy—that " it sent to The Hague, with the large appropriation for " expenses made plain the intention to evince its earnest

" interest in the result. There was a law agent expressly " named for the purpose, and, with him, a staff of stenog- " raphers, translators, typewriters, etc., and even the chief " law officer of the State Department accompanied the mis- " sion as associate counsel. Mr. Descamps' persistent effort " to secure for himself the post of honor, and the final reply, " on our side, to the exclusion of Judge Penfield, to whom it " properly belonged, showed more desire for self-glorification " than for our success. The firmness of Mr. Ralston, who as " representing the United States was *dominus litis*, saved us " from this error.

"My conclusion is that if Mr. Descamps is paid one thou- " sand American dollars he will be more than amply remu- " nerated."

On February 4th, he replied to this as follows: "I have " only time to acknowledge the receipt of your letter. I am " very busy and in addition I am suffering from a severe " cold. Then your letter is such that it requires an answer " in extenso. I do not think that you take a correct or just " view of the situation, from the fact that not having been " at The Hague it is impossible or difficult to form a correct " estimate of the difficulties and dangers surrounding the " case. I acted on the advice of Mr. Stewart, or to put it more " correctly, Mr. Stewart was of the opinion that I acted judi- " ciously for the best interests of the case. I shall try to " run down to Menlo next week." The reply in extenso intimated in this never came and his effort to come to Menlo next week so far as meeting me was concerned, proved, like all his appointments for the purpose, a failure.

In February (I cannot fix the date), he went off to Pasadena for an indefinite stay, all his promises and efforts to see me about the business that so deeply concerned us having failed. The two occasions on which he did call on me after his return from The Hague were on Sundays, when had I proposed to talk of business to him he could with great ease have put me off by suggesting a more appropriate day.

Yet during that time he found leisure to pay a day's visit to the Seminary (my next neighbor on one side), and on another to take lunch with my immediate neighbor on the other side. In each case, however, he did not feel well enough to call on me, as he purposed, although on a previous occasion he had come to my house when sufficiently ill to require the aid of a physician. Looking back over his numerous appointments and equally numerous disappointments I should

have been dull indeed not to suspect that he was shunning me. When he said he was anxious to see me, charity compels me to surmise that he deceived himself; what he was anxious for was *to have seen me* and get through with an interview that he foresaw would be so disagreeable that every time he proposed to have it, he shrank from fulfilling his promise. I surmise, too, but have no knowledge, that he was cautioned by Mr. McEnerney against meeting me, lest he might incautiously say or assent to something he desired not to. This conjecture appears confirmed by his subsequent evasive letters, written by Mr. McEnerney, and the control of his actions exercised by the latter.

A partial list of his engagements and appointments to see me is I think appropriate here, to enable the reader to better understand my impatience.

On January 6th, 1903, he wrote me, "I intend to be in "Menlo, on Thursday" [January 8th] "and will call at your "house not later than 11:30 A. M." But he did not come.

On February 4th, he wrote, "I shall try to run down to "Menlo next week." But he did not come.

On February 24th he wrote, "I . . . leave for San Fran- "cisco on Thursday evening and will bring it with me; I "wrote to Mr. McEnerney to tell you what has been done in "the Wilson matter."

On April 27th, being, perhaps, unduly impatient at these many promises and failures to perform, I was importunate enough, while sending him a letter of Mr. Ralston on the subject, to write the Archbishop as follows:

"I received some days since a letter from Mr. Ralston, "which I enclose for your perusal. When considered, I would "request you to return it to me. Senator Stewart has also "sent me a copy of your recent letter to him and his reply, "with your rejoinder. I did not apprise you of these papers, "etc., sooner, or write on the subject, hoping that the arrival "of Easter, and seasonable fine weather, would enable you "to fulfill your promise to look in on me, and talk over this "question of fees, which, in fact, ought to be settled without "further delay, and can better be discussed, *ore tenus* and "here, where are all the papers, correspondence and books "needed for reference. If you can now fix a day when it can "be taken up by us, I will have the papers, etc., on the table "at the time you appoint, and be gratified to attend to it with "you.

"If you cannot, I will, if desired, write you my ideas, though

" that method is far more troublesome and less satisfactory " than a personal interview."

On Wednesday, April 29th, he acknowledged this letter, and so far from showing any offense at my insistence, wrote:

"I had intended to see you long before this, but I have been " quite unwell for the past five or six weeks. I went one day " to the Seminary, fully intending to pay you a visit in the " afternoon, but felt so unwell that I judged it better to " return to my own house. I leave on Monday for Chicago, " to be absent about four weeks, and after my return I shall " certainly make it my business to see you in Menlo.

"During my absence I wish you would put on paper your " ideas on the question of fees, which will be more satisfac- " tory at least to me than a personal interview. I am most " anxious to treat everybody justly in this matter, and for " that reason have sought advice from you and Mr. Stewart. " I have Mr. Stewart's opinion, but up to the present you " have declined to offer an opinion on the matter. As the " question must soon be decided, I should wish that on my " arrival the information necessary to form a correct judg- " ment may be in my possession.

"I am far from being well, and am so busy this week that " I cannot absent myself from the city. *My principal object " in going to Chicago is to see my brother, who is quite ill, and " see what can be done for him.*"

On May 5th I wrote him as follows:

"In response to your suggestion on the 25th ultimo, that " I put on paper my ideas as to the fees of counsel, in the " Pious Fund case, I would remind you that I did so, quite " fully on January 31st last, in a letter of several pages, " wherein I discussed the question at length. To that letter " I have had no reply beyond an acknowledgment of its receipt. " I refer to that letter for the circumstances which led to that " of Mr. Stewart and myself to you, of November 15th, 1897. " In it I endeavored to intimate modestly to you my dissent " from your apparent assumption that the distribution of " the fees contracted to Mr. Stewart and myself rested in " your discretion, but as your last letter indicates that you " still entertain that opinion, I must point out more clearly " the grounds and justice of my dissent from it. These, if " submitted to counsel, will, I believe, be found as valid in " law, as they are, I am convinced, sound in morals and con- " science.

"The history of our letter of November 15th, 1897, is given

" in mine of January 31st, and need not be repeated. The " object to be attained was to arouse the United States Gov- " ernment to active steps to obtain justice for us from Mexico. " The power to employ counsel for that purpose remained " long unexercised by you, until about December, 1899, when " Mr. Stewart sought to bring Mr. Ralston into the case as " an associate. You were at the time away from home (in " Europe, I think), and I declined to recognize Mr. Ralston, " as such, without your approval. On your return I reported " the matter to you, and after canvassing it fully, I, with " your approval, accepted him as an associate, and he took " hold of the case earnestly. It was he who succeeded in " securing the favorable attention of the State Department, " the subsequent pressure on Mexico, and the final agreement " to arbitrate—the convention provided for which was also " his work. Thus the object for which the power to employ " counsel was given to you was fully accomplished, the power " itself was exercised, by the acceptance of Mr. Ralston, and " the authority exhausted. Surely it can make no difference " whether the person who did this good service was thought " of by yourself, or suggested by another, and approved by " you; in either case the end was accomplished and the power " spent.

"I have a recent letter from the Senator, offering to abide " by any settlement of this matter I may make. Acting on " this authority, I must, in justice to him, and I do, withdraw " the offer at the close of my letter of January 31st, to leave " to your discretion the amount of Mr. McEnerney's fee to " be charged to us. And, speaking for both of us, I say that " as the arbitration in Europe entailed expenses which would " not have attended one conducted here, we may fairly be " asked to contribute to them. They were indeed made unnec- " essarily large, but it was all done in good faith and we are " not disposed to cavil at them and will make our contribu- " tion liberal. The final payment is due by Mexico within six " weeks, and in the interest of all concerned, all differences " between ourselves, if such there be, should be settled before " then, and a united front presented to the Wilson litigation, " which promises to be sufficiently troublesome anyway. You " are to be absent for a month and no one can foresee the " demands on your immediate attention on your return. There " is thus little chance of a settlement of this business, if it " be deferred till you come back. If unadjusted on the 15th " of June, we may all be drawn, most unseemly, into the

" Wilson suit, as parties interested, to the disgust of you and " me at least. These consequences of delay should be avoided.

"Mr. McEnerney is here, and there can be no need of any " intermediary between him and me. Hence I suggest that " you write him requesting him to agree on the amount of " his fee with me, which I believe we can do in fifteen minutes' " conversation.

"As to Mr. Descamps' fee, having never had any communi- " cation myself, the settlement will probably devolve on you, " and will, with your permission, be made the subject of a " separate letter."

Meantime the Archbishop had been corresponding with Senator Stewart and asked the latter to name what fee he thought should be paid Mr. McEnerney. Mr. Stewart's answer had been received, wherein he named, as I am informed, $25,000 Mexican money, and the Archbishop had replied indicating his opinion that that sum was insufficient and that he would "be obliged to submit the matter to two able attor- " neys who will (sift?) the case in all its bearings and sug- " gest to me what would be right and proper to award." On May 12th, 1903, Senator Stewart telegraphed me that he could not come to California, and requesting me to call on Mr. McEnerney and settle his fee with him. I therefore wrote to Mr. McEnerney for an appointment, and we agreed to meet on Saturday, May 16th.

On the day named we met accordingly. I showed him Mr. Stewart's letter and two telegrams, after reading which, I asked him to name what fee he thought he should receive. To my great surprise, he declined to name any sum, and even refused if I should name an amount to express any opinion on it. He would not talk on the subject; said he had refused in like manner to talk of it with the Archbishop, and when I at last suggested that we should communicate our ideas on the subject to a common friend and ask him to *give us his advice* as to what we should agree on, the most he would do was to say he would "communicate the suggestion to the Archbishop " as coming from me." There was more conversation, but as I wrote the substance of it presently thereafter to the Archbishop in my letter of May 18th, I omit it here for brevity. I returned from my interview with Mr. McEnerney, not a little mystified by his refusal to consider or discuss the amount of his fee. The reason for such singular reticence is not very clear, as he was a man of thirty-seven years of age and had been a member of more than one legal partnership, the form-

ation, etc., of which must have been preceded by the discussion of fees, division of profits, etc., the suggestion of youthful modesty was out of the question. It was of course possible that he had made himself "solid" with the Archbishop and was sure that the latter would award him a larger fee than he would demand or could even defend for himself, and the ridiculous suggestion which he made that if the Archbishop's award should be in his opinion too high, he was to be at liberty to mitigate it, pointed this way; but this thought was in my opinion so dishonorable to both the Archbishop and Mr. McEnerney that I dismissed it as out of the question. There remained but one other way of accounting for it, viz: that he designed to make a donation of his services to the Archbishop, as I believe he had done in many previous cases, and as the fee was to be taken from one friend, to be bestowed on another he objected to take any part in fixing its amount.

I settled upon this last as the explanation of his conduct as the only one which I deemed consistent with the honor of the Archbishop and Mr. McEnerney, and wrote Senator Stewart as follows: "It has occurred to me as a conjectural "explanation of Mr. McEnerney's refusal to discuss his fee "with either the Archbishop or me, that he has probably "been in the habit of charging the Archbishop nothing for "services, and may intend to do the same now. If so, he "must take no part in fixing the amount of it, but when fixed "by others and the money offered to him, he may refuse to "receive it. The benefit would thus accrue to the client; "*secus,* if he declined compensation from you or me." The position in which I was left was too false and ridiculous for endurance; at the age of eighty-three I was being treated like a child, by concert between a client of sixty-one and a young associate of thirty-seven. This I would not endure. The Archbishop had had from the 15th of October preceding to reflect upon and determine what amount should be considered a proper fee from Mr. McEnerney, and although he assured me he was for several months anxious to discuss the matter, had been so unsuccessful in doing so as to suggest the thought that he studiously avoided me. He was now absent and incommunicable.

Mr. McEnerney declined all discussion of the question with either of us and the last day of Mexico's payment of the money was less than a month off. Under these circumstances, on May 18th, I wrote the Archbishop as follows:

"Some weeks since I received a letter from Senator Stew-

" art, dated April 2nd, enclosing copies of your correspond-
" ence with him as to counsel fees in the Pious Fund case, and
" empowering me on his part to agree on Mr. McEnerney's
" fee, etc., of which I enclose you a copy. I took no action at
" the time awaiting your promised visit on the subject, but
" you went to Chicago without attending to it. On May 12th
" I received from the Senator a telegram in the following
" words, dated May 12th:

" 'Impossible for me to go to California till September
" Please call on Mr. McEnerney yourself, show him my letter
" of April 2nd, and settle his fee. I am sure you and he can
" easily come to an agreement; important to settle before
" payment of award.' (The punctuation is mine.)

"A day or two after I received from him another despatch,
" as follows: 'You had better see and settle with McEner-
" ney first; wire result; letter might offend, as close friend-
" ship exists.'

"I supposed that the urgency here intimated had some con-
" nection with the suit lately commenced in the District
" against you and others by Wilson, of which I had heard
" incidentally. Hence I sought an early appointment with
" Mr. McEnerney, and on Saturday morning met him accord-
" ingly. I showed him Mr. Stewart's telegrams and letter,
" and asked him to name his fee. To my surprise he would
" neither name a sum himself nor remark on any I might
" name—declined to discuss the subject at all. Said he had
" declined to name a sum to you, and persists in that deter-
" mination. I pointed out that if his fee was to be paid by
" Mr. Stewart and me, *we, not you*, were the proper persons
" to agree on it, and argued; but was quite unable to move
" him. I suggested at last that we should each impart (pri-
" vately, if preferred) to some common friend our respective
" ideas on the subject, and ask him to recommend a settle-
" ment to us; not as an arbitrator, but simply as the advice
" of a common friend. But he would only consent to lay this
" suggestion before you, as coming from me. I found he
" knew all about the Wilson suit, and he promised to let me
" have a copy of the bill. He also mentioned to me in the
" course of our conversation, that you had told him that, in
" the interview wherein you secured my consent to the
" employment of Mr. McEnerney as counsel in the case, I had
" asked you whether you had made any arrangement with
" him as to his charges, and that you had replied in the nega-
" tive, saying that you had no occasion for such arrangement;

" that when the case was finished you would allocate to him " so much of the fee contracted to Mr. Stewart and myself as " you thought right, and that if he (Mr. M.) considered it too " much, he could reduce it! Extraordinary as this statement " seems, I do not think there is any doubt that I am reporting " it correctly, for I asked him to repeat it and he did so in the " same terms. I told him, of course, that either he had mis- " understood you or you me, for no such conversation passed " between us, and I think I can satisfy you (if you so recollect " our interview) that your recollection is demonstrably " erroneous.

"It appears, however, from all this that Mr. Stewart and " myself are expected to pay fees to an amount to be deter- " mined by yourself, with the aid of two gentlemen unknown " to us (referring to the Archbishop's letter to Stewart of " March 13th), and we cannot even make an effort to agree " on their amount with the person who is to receive the money. " Meantime you, to whom we are supposed to have thus re- " signed the management and control of our business, have " not found time, in seven months, to attend to it, and now, " at a time when its settlement is deemed important, are " absent and practically incommunicable.

"I cannot consent to occupy a position so absurdly false, " and do not suppose you would expect me to. As the sim- " plest way out of it, I revoke any power, promise or " authority I may ever have given you, or be supposed to " have given you, to determine for me, or at my expense, the " amount of fees to be paid, in the Pious Fund case, to Mr. " McEnerney, Mr. Descamps, or anybody else, for services " therein. I will attend to my own interest and duty in that " matter, myself.

"In my letter to you of January 31st, last, I recalled the " circumstances under which that of November 15th, 1897, " was given by Mr. Stewart and myself, etc., saying, "may " I confess to you that from the time Mr. Ralston came into " the case and showed this activity and vigor, it rather " seemed to me as if our letter of November 15th, 1897, was no " longer in force, was, so to speak, *functus officio*. As you " do not appear to have apprehended the argument which I " meant thus to intimate, I will here express it more plainly. " Our letter of November 15th was given, in order to empower " you to employ someone who might be more successful in " moving our government to action than we had been. On " Mr. Stewart's nomination you consented to taking Mr.

" Ralston as counsel, and he produced the pressure on Mexico " which led to her agreement to arbitrate. The desired object " therefore had been completely accomplished, and the power " given for the purpose of such accomplishment *had been* " *successfully exercised and was exhausted.* It may be sug- " gested to you that the words of our letter are broader than " the intention above named. Very likely; but I am speaking " of its construction as between gentlemen and friends; " honorable men on both sides."

On Monday, June 1st, the Archbishop wrote me as follows:

"I returned from Chicago last Wednesday evening and as " I have been quite unwell since, I have delayed until to-day " to answer your letter, though I instructed the Secretary to " acknowledge its receipt. I am now able to send a reply " which will be as brief as possible. I wish in the first place " to say that any disagreement or controversy with you about " the compensation to be made by me to counsel, engaged to " aid in the conduct of the Pious Fund suit before the court " of arbitration, would be extremely painful. I would wish " to see this great case of the Pious Fund ended, leaving all " connected with it in relations the most amicable and harmo- " nious. I would prefer to pay personally if I were able or " permitted to do it, the entire amount of the compensation " rather than that a controversy should arise which would " lead to an estrangement between you and me.

"Our relations for well nigh twenty years have been of such " a nature that no money could compensate either of us for " changing them. I am of the opinion that the matter in " dispute or which may be in dispute, can be satisfactorily " adjusted by referring it to some outside party or parties " whose decision shall be accepted by us as final.

"If you will select five or six attorneys of San Francisco, " of well known ability and distinction, and permit me to " choose one of them, I shall be satisfied with whatever deci- " sion he may render. Of course the one selected should " receive suitable compensation for his services, to be borne " equally by you and me."

On June 2nd I wrote the Archbishop in reply:

"I thank you very much for the kindly expressions in your " letter of yesterday, and assure you that I would deplore as " much as possible anything that would lead to such an " estrangement as you speak of. But I deem any reference " to third persons premature until we shall have first ascer- " tained and defined the actual difference between us, and

" found that we cannot ourselves reconcile it. I assume Mr. " McEnerney's reason for refusing to discuss the amount of " his fee with either you or me, to be one entirely consistent " with his friendship for both of us, and the honourableness " of his own character; but as someone must represent that " side of the question, in our discussion, I suggest that you " take that part, while I represent Mr. Stewart and myself; " and that we come, without further preliminaries to the " point, at once; for the question should be settled before the " money is received in Washington, or delay may draw us " into the vortex of the Wilson suit. If, therefore, you will " name frankly what sum you think should be charged to " Mr. Stewart and myself for Mr. McEnerney's services at " The Hague and his expenses, I will promptly, and as frankly, " tell you in what respect, if any, I differ from you and why. " I think we will thus be able to reach a sound conclusion, " without the need of anyone's assistance."

On the day after writing this letter (June 3rd, 1903), on coming down stairs from my chamber in the morning I was surprised to find the Archbishop waiting for me. He had stopped over between trains on his way from Santa Clara to San Francisco. He began, after the usual salutations, by expressing his distress at the prospect that this great case, after having been so honourably won, should end in a dispute and difficulty among ourselves about the fees; trusted we should reconcile all differences, etc. Much more of this general nature. I asked if he had received my letter of yesterday, and as he had not, I showed him the press copy of it, which he read. He spoke of arbitration and thought I must be able to select from the lawyers in the city some suitable person; I told him that the public and, to some extent, the professional mind here had become demoralized on the subject of lawyers' fees by the enormous salaries paid by the great corporations to standing counsel, and the monstrous fees said to be given to lawyers in certain probate and like cases wherein estates of great magnitude were in dispute and the contradictory testimony pointed clearly to perjury on one side, and perhaps both; that opinion derived from such cases was wholly unsound, and they formed no standard for charges in a case like ours; that those enormous fees covered, or were believed to cover, services of a character which no honourable man could render, as fraud, subornation, and the sacrifice of all conscience and honour. Such were no guide for a case like ours, which involved only the application of recognized prin-

ciples of law to known facts; *that the true standard for us was "what sums had heretofore been paid by the United "States for similar services in like cases."* That the United States had had many such international arbitrations, some of them of great importance; that it was regarded as highly honourable to any professional man to be employed to defend the honour or the interest of his country, before an international tribunal, and gentlemen were proud so to serve without the temptation of the monstrous fees before referred to. *"Pulchrum est benefacere reipublicae; etiam benedicere haud absurdum est."* I pointed out to him that I, who had conducted the case from the commencement to its conclusion, had to subscribe as "counsel for the prelates" while these gentlemen who came in at the closing scene proudly wrote themselves down as "counsel for the United States." I mentioned to him, as the greatest arbitration in history, that between the United States and Great Britain on the Alabama claims, referring to the eminence of the counsel employed, the great extent of their labours, the length of time consumed in their two visits to Europe, the great magnitude of the amount recovered ($15,500,000), and that their compensation had been fixed at ten thousand dollars each; and that *in greenbacks, worth at the time eighty-seven and a half cents on the dollar.*

The Archbishop enquired if I was sure of this amount and I referred him to the statement in Moore's International Arbitrations for it. He also enquired whether I was sure that Mr. McEnerney had appeared at The Hague as counsel for the United States, and I showed him at once the proof of it. I suggested consulting the State Department as to the fees usual in such cases. I even offered to allow Judge Penfield, the solicitor of the State Department, who must be familiar with the whole subject, who knew the case and the work of all the counsel and had attended the court at The Hague and taken part in the argument, to name the fee. The Archbishop objected to this on the ground that he feared that the Judge was *too close to Ralston.* The Archbishop then, moving by the flank, proposed, by way of interrogatory, other gentlemen, as Mr. Olney, or Judge Seawell. I told him the high opinion I entertained of both those gentlemen, but said that while I was willing to let Judge Penfield fix the fee, it was because he knew all about the case, had made the same study of it that Mr. McEnerney had, and knew, or could learn, what had been paid heretofore for like services in similar

cases, which another could not. As he was rejected, I went back to the absurdity of an arbitration without a defined claim. He said he was unable to define what should be paid, because he had no knowledge of the subject, and Mr. McEnerney refused to make out a bill or speak on the subject. We had of course a deal more talk of the matter, too long to be given here, and we parted with my promise to write Mr. Stewart for his opinion, and to think over the matter further. He asked an explanation, and I gave it, of how we might be drawn into the vortex of the Wilson suit, and I told him if we had to resort to a lawsuit for settlement I preferred it should be in Washington. After the departure of the Archbishop, I telegraphed the occurrence to Mr. Stewart, and wrote to Judge Seawell, as related in my note of the following day to the Archbishop.

On June 4th I wrote the Archbishop as follows:

"I yesterday telegraphed to Senator Stewart, your sugges-
" tion, and to expedite matters, if possible, wrote Judge
" Seawell, as follows:
" 'My Dear Sir:—A difference has just arisen, between old
" 'and close friends, as to the fee to be paid to one of them—
" 'a gentleman of our profession—for services. He abso-
" 'lutely refuses to name or intimate any sum, or even talk
" 'on the subject, leaving the amount to be determined by the
" 'others. The position is very delicate and they prefer to
" 'confide the matter to some impartial person, in whom all
" 'have confidence. In this embarrassment a proposal has
" 'been made that the whole matter be left to your determina-
" 'tion, as arbitrator. It will require, probably, a couple of
" 'days of your time, and perhaps a couple of hours of oral
" 'explanations or introduction; the examination will be of
" 'printed papers only. You are of course to be paid for
" 'your services a respectable sum. The third party, whose
" 'assent would be necessary, has been telegraphed to and
" 'his answer may be expected to-morrow. Meantime I write
" 'to inquire whether you are able and willing to take the
" 'matter up at once (for dispatch is important), and give
" 'your judgment on it. You understand that the parties are
" 'all good friends, and earnestly desire to remain such; and
" 'for that purpose, to have the thing determined by the judg-
" 'ment of one in whom they have all confidence, and one who
" 'is quite disinterested. Your immediate reply will oblige
" 'all parties, including Yours very truly (signed), John T.
" 'Doyle.'

"Reflection, however, confirms my conviction that a pecuniary demand which is undefined cannot be the subject of arbitration; until a sum is named, we do not know what is in controversy, or whether anything is. It will therefore be necessary before we attempt an arbitration, that the amount demanded for Mr. McEnerney be defined. If you are unable to do it, better get some friend to do it for you. Until that is done the most we can do is to ask the *advice* of a friend as to what we should offer. This indeed might be as good a way as any other to reach a settlement, and it is one I have often known to succeed well. I will therefore modify my suggestion in that way; that we ask the advice of the department on the subject, and we can also take that of the Judge. When I named Judge Penfield yesterday, I should have said 'the officer, whoever he is, who has 'charge of those matters in the Department.' They have in that office standards and an experience of their own, unknown to us, and as to any influence of Ralston, I omitted to tell you that he is away in Caracas, where he is acting as umpire, in one of the many Venezuelan arbitrations, and incommunicable."

On June 5th the Archbishop wrote me as follows:

"Your letter of yesterday just received. In answer I beg leave to say that no one connected with the Department in Washington should be called in to settle this matter, when it can be done in much less time and just as well at home. If Judge Seawell accedes to your request, we can have a decision within three or four days. Should it go to Washington, it might take a month before an answer is returned."

On the following day (June 6th) I wrote him in reply:

"You appear to have misapprehended my letter of Thursday; I had offered to leave the determination of the fee to Judge Penfield, because he knew all the facts and occurrences, and either knew, or could learn, what fees had been heretofore paid for like services in similar cases, which is I think the standard. You expressed an objection to this proposition which I considered equivalent to a rejection of it. In my letter of Thursday I intended, while rejecting the suggestion of submission to arbitration of a controversy as yet undefined, to propose that we lay the matter before Judge Seawell for his *advice*, as to what sum we should offer Mr. McEnerney, and do the same with the State Department, and get their advice also. I do not make this

" a condition of consulting the Judge, but if you decline to
" unite in the request for the opinion of the officers who have
" the familiarity of forty or fifty such cases, I shall endeavor
" to get their opinion myself. I wrote some days ago to
" ascertain what fee the Government had paid Mr. Ralston
" in this case, as that would afford some light on the matter;
" but learned in reply that the Secretary in apointing him,
" exacted a stipulation from him that he should make no
" charge. As the expenses were to fall on the claimants, this
" looks much more like a desire to protect your interest, than
" to favour him. I regard the submission of a demand of
" which the amount is entirely undefined, as an act of mere
" folly, *and out of the question*. Your second letter to Mr.
" Stewart, shows that you have definite ideas of the amount
" of this claim. If you will state what your idea is, I will
" promptly tell you mine, and my reasons. After that it will
" be in order to consider the question of arbitration. Judge
" Seawell can give us any day after Monday next during the
" coming week.

"You will recollect that I foresaw the desirableness of set-
" tling this matter at an early date, and called your attention
" to it several months since. Unfortunately you were unable
" to find time to attend to it; I mention this only to show that
" if any unpleasant results attend it, the fault cannot be laid
" at my door. I still have hope that you will accede to my
" last suggestion, viz.: that we take the opinion of Judge
" and the State Department on the subject, and then giving
" to each its due weight, endeavor to agree. I believe we
" shall be easily able to. The opinion of the Department can
" be telegraphed here in season. I see no other way out of
" the deadlock."

On June 8th the Archbishop replied:

"Your letter of the 6th instant, with special delivery stamp,
" was delivered at the Cathedral residence Saturday evening,
" but as the porter did not think it of great importance kept
" it until I came to my office.

"I have read it carefully. The last sentence is the import-
" ant one which should have its answer immediately. It is
" as follows: 'I still have hope that you will accede to my
" 'last suggestion, viz.: that we take the opinion of both
" 'Judge (I suppose you mean Judge Seawell) and the State
" 'Department on the subject, and then giving to each its
" 'due weight, endeavor to agree. I believe we shall be easily
" 'able to. The opinion of the Department can be telegraphed

" 'here in season. I see no other way out of the deadlock.'
" To this sentence I answer as follows: I have no objection
" that the opinion of both Judge Seawell and of the State
" Department be taken. When received we may be able to
" reach an agreement. If not, the matter can be left to the
" decision of Judge Seawell."

On the receipt of this letter it struck me that the Archbishop had somewhat eccentric notions on arbitration; in all his proposals *he was to choose the arbitrator*. His first was that I name so many persons from whom he would select one. That not being accepted he named an arbitrator to whom he wanted my consent; and here in this letter he agrees to consult two persons, one named by each, and *if they differed the gentleman named by him was to decide*. Without then attaching much importance to it, I could not help thinking it peculiar. I answered him on the same day, congratulating him on *progress* and promising to prepare with all possible dispatch a memorandum of the necessary facts to be shown to the gentleman referred to and pass it to him for correction, if deemed to need such.

On the following day (June 9th) I sent him the statement of facts I proposed, with the following letter: "I enclose a
" statement of our question which please read; if you desire
" anything in the way of correction or supplement, be good
" enough to have it typed and send me a carbon of it; sign
" and send it to Judge Seawell at the City Hall. I will send
" him my ideas on the question as speedily as I can commit
" them to paper, and will give you a copy. Please do the
" same for me as to yours.

"I notice that you say in your last letter that if we do not
" reach an agreement, the matter can then be left to Judge
" Seawell. Of course *it can*, but do not understand me as
" agreeing that *it shall*; I do not propose ever to arbitrate an
" unknown question. I think it would be right to agree at
" once as to the sum to be paid the Judge for the trouble we
" are giving him; and, if satisfactory to you, would propose
" two hundred and fifty dollars, half to be paid by the prel-
" ates, and the other half by Mr. Stewart and myself. I feel
" rather hurried in this matter, because a paragraph in yes-
" terday's paper suggests that Mr. Stewart may be in some
" financial trouble, and I want to be able to telegraph *progress*
" to him. For this purpose please let me know by telephone
" as soon as possible what you have done about it." On the 12th of the month I received the following from the Archbishop:

"I received your letter dated Menlo, June 9th, enclosing " a statement of our question which you asked me to read " and to add anything in the way of correction which I might " deem necessary. You also asked me to sign it and send it " to Judge Seawall at the City Hall.

"I have been so unwell since your letter reached me so as " not to be able to give it any attention. I read it last even- " ing and then again this morning, and return it with the fol- " lowing observations:

"First: I do not think that I should be asked to sign this " paper which in my judgment does not contain a full expo- " sition of my side of the question; for instance, in all that " relates to my going to New York in order to engage the " services of an attorney or attorneys, you omitted the fact " that I went at the express wish of Secretary Hay, who " impressed on me the necessity of selecting counsel of ability " to argue the case before the international tribunal at The " Hague, and who suggested the names of two attorneys there, " either of whom would be satisfactory to him; Mr. Freder- " ick Coudert and Mr. John Bassett Moore, about whom you " yourself wrote to Mr. Abraham Hewitt.

"Secondly: I acted in this matter of the selection of an " attorney under the authority given me by the joint letter " signed by yourself and Senator Stewart. I always supposed " that I had authority to select additional counsel, and now " for the first time I find in your letter that you do not admit " this right.

"Thirdly: In view of all this it is better not to refer the " matter to anyone for suggestion as to how much should be " paid to Mr. McEnerney for his services, but to have me " name the sum which I intend to give him, and if that sum is " found to be exorbitant the difference that may arise can be " settled definitely in some other way. I foresee that we shall " have to go over all this matter again before someone hav- " ing authority from both of us to decide the matter, and " hence it is useless to do now without reaching a conclusion " which we shall have to do a second time in order to reach " a conclusion.

"Fourth: I propose to pay Mr. McEnerney $10,000 in " United States gold coin for his services and $1500 to defray " his expenses."

Both the Archbishop's excuses for declining to either accept the statement or correct it were so frivolous that this letter appeared a good deal like a mere backing out of the agree-

ment to consult friends which we had made a day or two before. It was evidently written, too, under the "advice of counsel," and the latter part of it written by counsel. Though somewhat shaken by observing these things, I still had such confidence in the frankness and good faith of the Archbishop and Mr. McEnerney that although I was unable to settle in my own mind who the legal adviser was, it did not cross my mind that it could possibly be Mr. McEnerney himself. I even began a letter to the Archbishop urging him to remind or inform *his new adviser* of certain things that made it important we should avoid a controversy, but left it unfinished, as useless. I did not, however, despair of reaching a settlement, and on June 15th replied to the last letter as follows:

"I received yesterday, your letter of the 12th inst., and am " gratified to get a definition of the amount claimed for Mr. " McEnerney. As to the $1500 for expenses, travel, etc., you " know all about it from experience, and I know nothing, " therefore I accept your figures. As to the fee, for which " you think ten thousand dollars the proper sum, I think it " should be estimated at five thousand. I will tell you my " reason for this further on. But meantime it reduces the " amount in dispute between us to five thousand dollars, and " if, with ample time for the purpose, you and I cannot arrive " at a settlement of that, I shall be very much disappointed, " and think we are not as competent men as we are supposed " to be. I am satisfied that we can, and will. As to the state- " ment to be used for the advice of friends, which you return " unsigned, you must have failed to notice that the last para- " graph provided for anything further from you, which you " might deem needful to correct or complete it. I shall type " the matter which you deem needful to complete it from your " letter, and enclose it. Please sign and return it (correcting " if necessary) and I will have the necessary copies made for " Judge Seawell and the Department. The Judge tells me " that he will go to the country July first.

"I presume you will receive the Mexican payment this " week; you can of course, hold back out of our part sufficient " to cover what you feel called on to pay, for the account of " Mr. Stewart and myself, and send us the remainder; Mr. " Stewart's portion as he has directed, and mine by check " to my order. If convenient, I would like it to be accom- " panied by an account, such as Archbishop Alemany always " sent with his annual remittances."

On June 6th the Archbishop wrote me (this letter is misdated *July* instead of June) as follows: "I am in receipt " of your letter with the enclosed document which I return. " I do not see any use in consulting the Department about " the fee to be paid Mr. McEnerney. I have no objection " that Judge Seawell be consulted, but would remark that if " his suggestion as to the amount is not accepted by us, then " he is debarred from any further connection with the case, " and we shall have the trouble of selecting another arbitra- " tor and of paying another fee.

"Considering the time which Mr. McEnerney took from " his business in this city, which was rather lucrative, I could " not think of offering him less than the amount mentioned " in my last letter. I put the figure down as low as I possibly " could in honor, and while I am willing that it should be " submitted to outside parties, in case of a disagreement " between us, I hardly think that a suggestion would have " sufficient force to make me change my mind. However, if " you think that a suggestion from Judge Seawell without " any binding character to it, will help in coming to an agree- " ment, I am satisfied that the matter should be referred to " him to receive his advice only. However before the Judge " makes any suggestion I shall insist on having a half hour " or an hour's oral conversation with him. I am too unwell " to sit down and write or even dictate all that I could say " on this subject. I think it better that you should make out " your case independently of mine. There are *too many mat- " ters irrelevant to the case in this enclosed document, and " there are some matters of a personal nature,* such as that " I grew nervous, that have absolutely no bearing on the case. " If I remember correctly, and my memory is quite accurate, " you were the person who was most fearful that there was " not sufficient time to prepare the case properly for the " tribunal. It seems to me that I should not be asked to sign " a document containing all these matters. I will therefore " make out as soon as I possibly can, a short statement, a " copy of which will be sent to you and a copy to Judge Sea- " well. You do the same for your side of the question. I " must have a short interview with Judge Seawell in the way " of explanation, the same privilege to be given to you."

On June 17th I answered as follows: "This morning's " mail brings me your letter of yesterday, saying that you " see no use in consulting the Department about the fees to be " paid to Mr. McEnerney, but have no objection that Judge

" Seawell be consulted, etc. I am not sure that I understand
" correctly the sense in which this is intended; therefore, if it
" means that you absolutely retire from our agreement,
" assented to by you on the 8th instant, that we should con-
" sult both the Department and Judge Seawell, on the strength
" of which I prepared the statement sent you on the 12th,
" please let me know the fact, that I may at once apprise
" Mr. Stewart of this change of front. I can scarcely think
" that you mean to say that you will not even hear what the
" Department thinks about the question before us, wherein it
" has had such large experience, nor how I am to account to
" Mr. S. for your agreeing on the 8th of the month, and after
" the statement has been made and amended to conform to
" your words, your refusing to do so, on the 16th.

"When we had a law in this State forbidding a negro to be
" a witness, where a white man was a party, I heard a learned
" judge talking of the subject say, 'for my part, if I thought
" 'a dog could speak and testify, I would *hear* him; something
" 'might be learned, and nothing could be lost, by listening
" 'even to a dog.' Our modern legislation is all based on this
" theory, which has been in fact generally, if not universally
" adopted. I beg you to give me at once your definite answer
" that I may report to Mr. Stewart."

On June 18th the Archbishop telephoned me "no objection
" to consulting the Department."

On the same day (June 18th) I wrote him as follows: (mis-dated 17th) "I received yesterday three long telegraphs from
" Washington, the text of which I am sorry I cannot give
" you, and this morning I have your reply by telephone to
" my letter of the 17th instant. But we have not time for
" further *pourparlers*, and if we are to reach a conclusion at
" all, must do so without further delay. Your naming a sum
" for Mr. McEnerney's fee removes my objection to arbi-
" trating an undefined issue, and I have drawn an agreement
" to submit our difference to Judge Seawell as arbitrator,
" making his decision final. It is not in the usual form with a
" penal bond, but is valid and covers all the points intelli-
" gibly, I believe. I send to the city with this, by my son,
" John, one copy of it, signed by myself, and he will have
" another copy made there for your signature. He will also
" learn from the Judge what time he will require for his deci-
" sion and fill the blank with your approval accordingly. He
" will receive your answer at once or call for it later, as you
" may desire, and also arrange with the Judge for his call
" on you and me as proposed.

"I hope you will be able to sign this for yourself and the "Bishop of Monterey, and if signed, he will so telegraph "to Washington.

"I sincerely hope that we may thus end the only unpleasant "occurrence that has happened in the New Pious Fund case "since we signed our contract in December, 1889, and leave "only pleasant reminiscences behind."

That letter I sent to the city on the afternoon of the 18th by my son, who carried also a copy of the arbitration agreement, signed by me, in which there was a blank for the time within which a decision should be made. On arriving he went at once, as he reported to me, to Judge Seawell's house, saw him, and by his direction filled this blank with the words *thirty days*. He then called on the Archbishop, and presented it to him, with my letter. He declined to read the agreement or open the letter then, though pressed to do so, and the substance of them was related to him. He refused, making excuses, as I am informed, as that he was not very well; would read it in the morning; why must this thing be hurried so? he wanted to go away for a few days to recuperate, would not go more than four hours distance, and as soon as he received a telephone that the money was received here, he would return and distribute it. As he positively refused to read the proposed agreement or open my letter, my son came away, leaving him a telephone address by which to call him if wanted. This of course made it clear that he would do nothing save under the positive direction of his new professional adviser, and that he feared to even read a paper relating to the matter, lest he might say or do some rashness, unadvisedly. Down to this time I had invariably communicated to the Archbishop everything I learned or wrote or heard about our case, sending him copies of all papers. I had absolutely no secret from him about it, and his manner and conversation warranted me in supposing that he was equally frank with me. This practice I adopted several years ago in order that he might have a complete file of all the papers, doings and correspondence in the case, and thus be enabled, if anything befell me, to put any counsel employed in my place into possession of every fact and circumstance connected with it as fully as possible. I informed the Archbishop of this intention, and lived up to it. Here, however, I found my position altered; Mr. Stewart had constituted himself my client with respect to this question of the charge against us for Mr. McEnerney's services, and I had no right to communicate to anyone *what he said to me*. I felt that the withhold-

ing of it without reason assigned would be a departure from our line of intercourse of a dozen years, and therefore wrote him as above, *I have received telegraphs from Mr. Stewart, which I am sorry I cannot give you the text of.* I did, however, feel at liberty to let him see the text of my reply to those messages, and my son showed it to him, as he informs me; from it he could see that I had declined to allow my name to be used as a plaintiff in a suit against him, and was at liberty to infer that I had been so invited. On the following morning on calling on the prelate my son was told by the Archbishop's secretary that he would write me by mail, and in fact on the following day I received the following letter from the Archbishop. It is not written on his usual paper, nor even on letter paper of any sort, but on foolscap. It was evidently prepared in a lawyer's office and sent to him for his signature. It bears date June 19, 1903, and reads as follows:

"I have examined the agreement which you sent me last " evening to submit the matter of Mr. McEnerney's fee to " Judge Seawell.

"I have not signed it, nor shall I, for the following reasons:

"First: I have informed Mr. McEnerney that you and Mr. " Stewart suggest $5,000 (besides expenses) for his fee, and " that I, on the other hand, have suggested that he be paid " $10,000. Mr. McEnerney is willing to accept the $10,000 " and be satisfied with it. He tells me, however, that he is " not satisfied to have me arbitrate the amount of his fee " with a $10,000 limit. He considers that he may reasonably " expect to be awarded $20,000 in an arbitration. He is " entirely satisfied to accept Judge Seawell's award, what- " ever it may be, but will be dissatisfied with an arbitration " where Judge Seawell is limited to a fee of $10,000. I " placed Mr. McEnerney's fee at $10,000, considering that the " lowest sum which he could be offered in justice. In fact, I " had intended to pay him an additional sum if he felt the " amount allotted was too small. *My purpose for a long time* " *has been to fix his fee at* $15,000, which I would consider just. " I am, therefore, of the opinion that his position is a reason- " able one, and that if the matter is referred to Judge Sea- " well no limit should be put upon the amount which he is at " liberty to award. He should be permitted to award any " sum which he considers to be fair, and his decision should " be final. If the matter is submitted to Judge Seawell Mr. " McEnerney should be invited and permitted to take part " in the proceedings.

"Second: I have received the account of the State Depart-
" ment, and I think that there are some items there which
" should be charged against you and Senator Stewart. For
" that reason, if for no other, I should decline to sign any
" agreement which included the first paragraph of the second
" page: 'This agreement is made on the understanding and
" 'condition that after deducting and holding back sixteen
" 'thousand seven hundred and fifty dollars from one-fourth
" 'of the net sum collected by the United States from Mexico
" 'under the award, as turned into U. S. gold in Washington.
" 'less the expenses charged to the claimant by the Govern-
" 'ment, the residue of twenty-five per cent thereof shall be
" 'immediately on receipt of money from the Government,
" 'distributed to Messrs. Stewart and Doyle, one half to each;
" 'Senator Stewart's portion to be paid as he has already
" 'directed or may direct, and that of Mr. Doyle to be paid
" 'by check to his order.' But if these expenses were adjusted
" and out of the way I would still decline to sign an agree-
" ment with that clause contained therein for the reason that
" I do not understand what its object is. If you mean by this
" clause in the contract to invite me to promise that I will
" do anything which I have agreed to do I answer that it is
" unnecessary. What is the purpose of this paragraph?

"Third: I understand the $16,750 referred to in that para-
" graph to consist of $10,000 to cover Mr. McEn-
" erney's fee, $5,000 to cover Senator Descamps', $1,500 to
" cover Mr. McEnerney's expenses, and $250 to cover my half
" of the *honorarium.*

"Fourth: I will not burden myself with an agreement that
" the matter shall be confidential. I have no desire to give
" it publicity. I shall not speak of the matter unless I have
" occasion to do so.

"Mr. McEnerney has handed me to-day a telegram received
" by him from Senator Stewart and his reply thereto which I
" enclose."

I immediately (June 20th) wrote the Archbishop:

"Acknowledging your letter of yesterday, I have only time
" at this moment to say, that I could not make such a radical
" change as you suggest, without consulting Senator Stewart.
" Meantime, in order to make some progress, will you please
" send me a copy of the account received from the State
" Department, *and designate the items that you think should*
" *be charged to Mr. Stewart and myself.* Not having heard
" of such account or items, I could not, of course, have made
" any reference to them. I think, too, that as you propose
" to change so radically the agreement to arbitrate, you

" should cause to be prepared and let me have what you " would propose to have signed, in place of mine which you " reject. There is more I would like to say in reply to your " note, but must close this here to catch the mail."

On Monday, June 22nd, I wrote him again in continuation. " I wrote you on Saturday a very hurried and imperfect " reply to your letter of the day before. To conclude my " answer and reply to your enquiry on the subject, I have to " say that the purpose, or rather my reason for inserting " the paragraph conditioning the proposed agreement on " immediate payment of the residue of the twenty-five per " cent, was that it appeared to me that Mr. Stewart was in " very urgent need of cash, and meant to arbitrate only on " condition of very prompt payment of all that was conceded " to belong to him; hence I put it in the contract, and it was, " *of course*, to make it applicable to both of us, as there was " no reason for discrimination.

"My reason for the confidential clause was simply that any " difference between us might be magnified into a church " scandal, which I supposed undesirable. So far as I am con- " cerned, I do not care; my life here has been an open book " for about half a century; I have done nothing to be ashamed " of and do not expect to, in the short time left me. I have " never paid a cent of hush money or blackmail, and never " will.

" Of course I regard my connection with Mr. Stewart's " interests, in the Pious Fund case as closed, for which I am " no way sorry, as they have given me much trouble. You " have of course seen in the papers the ill fortune of his " daughter, etc., and can understand why he should want " ready money, which I hope he will now get, in season to " be of service to him."

I have transcribed my letter correspondence above consecutively, for convenience; but there was also going on during the latter part of the time covered by it another correspondence, by telegraph, which should be read in the same connection; as well as letters and telegrams that passed between the Archbishop, Senator Stewart and Mr. McEnerney.

"Washington, D. C., May 18th, 1903. Reverend Sirs— " Upon payment to you of the judgment of a tribunal of the " permanent court of arbitration dated October 14th, 1902, " had at The Hague in the suit entitled United States vs. " Mexico, you will please pay by New York draft or otherwise " the Citizens' National Bank of Washington City, District

" of Columbia, the amount to which I am entitled as attorney " by virtue of the contract existing between myself and you, " or either of you, in order that the money so paid to said " bank may be divided between myself and those with whose " payment I am charged. You are authorized (and I would " prefer if convenient to you that you do so) to instruct the " Secretary of State or other officers of the Government " charged with the disbursement of said award, to prepare " and forward directly to the order of the Citizens' National " Bank of Washington City a draft for the full amount of " fees coming to me, thereby avoiding the delay and expense " of double exchange between here and San Francisco.

"Very respectfully, WM. M. STEWART."

On May 29th the Archbishop, through his secretary, replied as follows:

"May 29th, 1903. Hon. William M. Stewart, 728 Bond " Building, Washington, D. C. Honorable Dear Sir—The " Most Reverend Archbishop is in receipt of your communi- " cation of May 18th, 1903, addressed to himself and the " Bishops of Monterey and Sacramento.

"His Grace desires me to say that he will be pleased to " afford you any convenience in the matter of making pay- " ment of your fee in the case of the Pious Fund, and will " make that payment according to your directions.

"Yours very truly, P. E. MULLIGAN, Secretary."

On June 10th Senator Stewart wrote the Archbishop on other subjects, and saying:

"I also desire to acknowledge receipt of the acknowledg- " ment of my communication of May 18th and to say that it " would be a great accommodation to me and my associates " if you would instruct the Secretary of State to issue sepa- " rate warrants, which would save time and exchange."

On June 20th Mr. Stewart telegraphed to Mr. McEnerney in reply to his of the preceding day (given page 48):

"So far as Ralston and I are concerned, a fee of ten thou- " sand dollars to you is satisfactory without arbitration. We " are also willing that the remaining seven thousand dollars " shall be used by Archbishop to pay other attorneys' fees " and expenses. When Archbishop directs deposit in Citi- " zens' Bank, Washington, as requested in our letter to him " of May 18th, he may deduct eighty-five hundred dollars " from our half of twenty-five per centum, as our contribution " to this settlement. That will entirely close transaction so " far as we are concerned. WM. M. STEWART."

On June 22d Mr. Stewart telegraphed the Archbishop:

"We telegraphed McEnerney on Saturday, accepting his " offer to take ten thousand dollars. We agreed in that de- " spatch that eighty-five hundred dollars from our half of the " twenty-five per centum should be retained by you to pay the " ten thousand and other attorneys' fees and expenses. We " requested him to ask you to instruct State Department to " pay into the Citizens' National Bank, Washington, balance " of our half of twenty-five per centum after deducting eighty- " five hundred dollars. We regard this as final settlement of " our half of the twenty-five per centum."

On July 14th the Archbishop wrote to Senator Stewart:

"In reply to your communication of July 1st, 1903, permit " me to say that I cannot on my own responsibility, and with- " out consulting the other beneficiaries of the Pious Fund, " give an order for the retaining of twelve and a half per cent. " thereof for your fee. Besides it is impossible at this " moment to determine the exact amount of your compensa- " tion. There are certain expenses to be met out of the gen- " eral fund before the payment of attorneys' fees, and until " the expenses are precisely determined it will be impossible " to fix the exact amount which will be payable to you. This " determination shall be arrived at as soon as possible, and " very probably before the Government is ready to turn over " to us the award. Needles to say, I am desirous that the " whole matter be closed up as speedily as possible.

"Yours truly, P. W. Riordan,

"Archbishop of San Francisco."

On July 20th Mr. Stewart replied by telegraph as follows:

"Letter received. Do not understand difficulty in ascer- " taining compensation. Is it not twelve one-half per cent. " less eighty-five hundred dollars, upon amount award, after " reimbursing Government and cost shipment to mint? Your " letter seems to suggest new difficulties as to compensation. " Please inform exactly your position."

On July 21st the Archbishop appears to have answered this telegram by letter of that date, through his secretary, P. E. Mulligan, as follows:

"In reply to your telegram the Most Reverend Archbishop " directs me to say that two weeks ago he submitted the state- " ment of the expenses in the Pious Fund as received from the " State Department at this office to Mr. Doyle. For some " unaccountable reason we have had no reply from Mr. Doyle. " I am writing him again to-day to settle this matter up as

" speedily as possible, and the Archbishop will immediately " make up the total expenses to be deducted from the entire " sum before the attorneys' fees are paid.

"Yours truly, P. E. MULLIGAN, Secretary."

It is quite true that on July 2nd or 3rd I received from the Archbishop the following lines accompanied by an account of four or five pages of expenses incurred by the Government at The Hague, but I do not see how that hindered him from answering Mr. Stewart's enquiry if he wanted to do so:

"San Francisco, July 2nd, 1903. Mr. John T. Doyle, Menlo " Park. Dear Sir—The Most Reverend Archbishop directs " me to send you the enclosed statement of expenses. His " Grace desires that you take a copy of it and return the list " to this office. Yours truly, JNO. D. MAHONEY."

I know nothing of such a letter as Mr. Mulligan says he " was writing me on July 21st *to settle this matter up as* " *speedily as possible.*" I received no such letter, and if he says he sent such I would like to see a copy of it. I received from him under that date a brief note, on a scrap of paper, requesting return of the Government account of expenses, which request I complied with the following morning, and that is all. It reads as follows:

"San Francisco, July 21st, 1903. Mr. John T. Doyle, Menlo " Park, Cal. Dear Sir—Some days ago the Archbishop sent " you a statement of expenses in the Pious Fund, as received " from the State Department. His Grace does not know if " you received that statement. Will you please return it to " this office if you have made a copy of it?

"Yours truly, P. E. MULLIGAN, Secretary."

On July 28th several telegrams passed between the parties, in what order I do not know. I arrange them in that in which I presume they were despatched, viz.:

July 28th Senator Stewart telegraphed to the Archbishop:

"Net amount draft on way from San Francisco to Treasury " Department, after paying transportation and all charges, " is six hundred and five thousand six hundred and eighty- " eight dollars gold. If paid at Washington June 14th and " converted into gold on that day, at then price of Mexican " dollars fund would have been only five hundred and eighty- " two thousand dollars. Our efforts, with kindly co-operation " of Treasury and State Departments, added to the fund over " twenty-three thousand dollars. According to usages of " Government, expenses of arbitrators, amounting to about " fourteen thousand, should be borne by United States, and I

" expect Congress at next session will refund it. Please tele-
" graph to State Department order I mailed you July 7th.

"Wm. M. Stewart."

On the same date Mr. Stewart telegraphed the Archbishop:

"Your secretary's letter July 21st received but does not
" give information requested in my despatch of July 20th.
" State Department cannot comply with your request for pay-
" ment in San Francisco, but will disburse fund here. Please
" telegraph fully at my expense the position you occupy.

"Wm. M. Stewart."

Mr. Stewart also telegraphed me, at same time, as follows:

"What items in Department's expense account does Arch-
" bishop claim ought to be deducted from our fee? Letter
" received to-day says he wrote you on this subject about July
" seventh. Wm. M. Stewart."

To which I answered on same day:

"I asked for these items but got no answer.

"John T. Doyle."

On the same day the Archbishop telegraphed Senator Stewart:

"As soon as I receive from the Secretary of State the state-
" ment of amount in hand, collected from Mexico, I will pre-
" pare and send you a statement which will fully explain the
" position which I occupy."

On the following day, July 29th, Mr. Stewart telegraphed the Archbishop as follows:

"Your want of frankness is a disappointment. My acquies-
" cence in your proposal to divert a large portion of our fee
" to the payment of other counsel, employed after the work
" had been done and the case was in print, was upon the sup-
" position that it was a final settlement. Your repudiation
" of that settlement opens the whole matter, and we shall
" claim the entire twelve and one-half per cent. earned by us
" under our contract, and will take necessary action in local
" courts to hold money here and enforce our claim.

"Wm. M. Stewart. 7:14 P. M."

This despatch was received in San Francisco on that day or the next, without doubt. The Archbishop answered by registered letter dated August 3d, but only received (according to Senator Stewart's authority) in Washington on the 10th of the month at 4 P. M. (and hence inferably mailed on the 5th) as follows:

"Hon. Wm. M. Stewart, United States Senator, Washing-
" ton, D. C. Hon. Dear Sir I am in receipt of your telegram

" dated Washington, D. C., 29th ult., which reads as follows:

" 'Archbishop P. W. Riordan, 1100 Franklin street, San
" 'Francisco—Your want of frankness is a disappointment.
" 'My acquiescence in your proposal to divert a large portion
" 'of our fee to the payment of other counsel, employed, after
" 'the work had been done and the case was in print, was upon
" 'the supposition that it was a final settlement. Your repu-
" 'diation of that settlement opens the whole matter, and we
" 'shall claim the entire twelve and one-half per cent. earned
" 'by us under our contract, and will take necessary action
" 'in local courts to hold money here and enforce our claim.'

" 'Wm M. Stewart.'

"This is the first time during a long public life, now
" nearly forty years, that I have ever been accused of a want
" of frankness in my dealings with people, and I repudiate
" the accusation as having no foundation in fact, and which
" should not have been made by a gentleman holding your
" position against one holding mine until you were sure that
" it could be sustained by facts. Your acquiescence in the
" fee which I was to pay Mr. McEnerney was absolute and
" there was no supposition that it could be considered as
" a final settlement. You asked me in your letter to do
" something of a most unbusiness-like character, namely,
" to instruct the Secretary of State to hold back, subject to
" your order, a certain portion of the award, which I should
" not have been asked to do before I had received your state-
" ment and the acquiescence in it of your assigns, Messrs.
" Ralston and Siddons and Mr. Kapler, and I had an oppor-
" tunity of comparing your statement with the itemized
" account of expense incurred by the Government in the
" conduct of the trial, a portion of which, to say the least,
" should in my judgment, be charged to counsel and not to
" me. But enough, now that you have signified your desire
" to take action in local courts, to hold the money in Wash-
" ington and enforce what you call your claim, it is not my
" business to offer any advice or suggestion. When the
" time comes to make our side of the question known in the
" courts which you select, we shall not refrain from pre-
" senting our side of the case, though most reluctant to have
" the great historic case of the Pious Fund meet with so
" ignoble an ending.

"I merely state, therefore, that until I receive an apology
" for your unfounded and ungentlemanly action contained
" in your telegram I must refuse to hold any correspond-

" ence with you. All communications on this subject or " on any other connected with the Pious Fund which you " may wish to make you will send to my attorney, Mr. Gar- " ret W. McEnerney, Nevada Block, whom I have appointed " to represent me in these matters. I remain, sincerely " yours,

"P. W. Riordan, Archbishop of San Francisco."

On June 16th Senator Stewart telegraphed me: "Award " paid to Clayton Saturday; Government finding difficulty in " securing New York exchange. Hopes to accomplish it " today or tomorrow."

On June 17th Mr. Stewart telegraphed me as follows: " Have telegraphed McEnerney as follows, 'Mexico paid " 'award to Ambassador Clayton; some difficulty in securing " 'exchange, but State Department will receive amount in few " 'days. I appeal to you to have your fee adjusted, so that " 'the money can be distributed at once. Please telegraph " 'answer. Stewart.' We have decided that if there is to " be litigation it shall be here, and at once. Shall we use " your name as plaintiff? W. M. Stewart."

On June 18th I telegraphed Mr. Stewart, "Fifteen hundred " travel expenses agreed on; for fee Archbishop demands " ten thousand; I five. This difference I propose to submit " to Seawell's arbitration, the rest of twenty-five per cent, " after holding back seventeen thousand for suspended fees " and expenses, to be promptly distributed. If this fails I " shall abandon effort. *Do not make me plaintiff.*"

On June 19th Stewart telegraphed me, "Arrangement in " your dispatch satisfactory. Have Archbishop direct Secre- " tary of State to pay into Citizens' National Bank, Washing- " ton, as per letter to him one-half twenty-five per centum " after deducting eighty-five hundred dollars, in conformity " with your settlement."

On June 19th McEnerney telegraphed Stewart, "I am more " than surprised that you and Mr. Doyle consider five thou- " sand dollars a fair fee for me. I consider twenty thousand " dollars reasonable. I would not hesitate to charge that sum " for similar services, even if the fee were not contingent, " as this was. The Archbishop has stated to Mr. Doyle that " he will allot me ten thousand dollars and expenses. Mr. " Doyle has agreed to the amount of expenses, and now " desires to refer to Judge Seawell, as arbitrator, the ques " tion of what sum I shall have, between five thousand and " ten thousand dollars. For the sake of peace and because

" I do not consider that money is worth a quarrel for it, and " without any belief that the amount is adequate or fair, I " am willing to accept the ten thousand dollars, but not after " arbitration. I have asked the Archbishop to not arbitrate " the question in that form. I am willing that my fee shall " be fixed by Judge Seawell, but not if he is bound to fix it " between five and ten thousand. I shall insist that he award " me whatever he considers to be just, whether it exceed ten " thousand or be below five thousand dollars."

On June 20th Mr. Stewart telegraphed me, "Have sent fol- " lowing to McEnerney in answer to long despatch agreeing " to take ten and protesting against arbitration: 'So far " 'as Ralston and I are concerned a fee of ten thousand dol- " 'lars to you is satisfactory without arbitration. We are " 'also willing that the remaining seven thousand dollars " 'shall be used by Archbishop to pay other attorneys' fees " 'and expenses. When Archbishop directs deposit in the " 'Citizens' National Bank, Washington, as requested in one " 'letter to him of May 18th, he may deduct eighty-five hun- " 'dred dollars from our half of twenty-five per centum, as " 'our contribution to this settlement. That will entirely " 'close the transaction so far as we are concerned.' "

On the evening of June 19th I had written the Senator relating my son's going to the city of San Francisco as mentioned above, and conjecturing that nothing would come of it, saying, *inter alia,* of the Archbishop:

"All things tend to persuade me that he is consulting with " " some lawyer (who cannot, I think, be McEnerney), who " wants a quarrel, or is too timid to do business. He says he " is going for three or four days to the country, but will be " within reach, and as soon as he learns from Archbishop " Montgomery that the money has been paid, will distribute " it; that is as reported by my son; but obstacles and impedi- " ments are easily found, and he evidently does not want to " expedite things or he would explain his objections to John, " who could communicate with me by telephone, and if capable " of remedy they could be remedied. John will wait in the " city till the last moment to get the Archbishop's letter and " bring it here to-night, in person; *but I judge it will be " mailed—for delay.* Altogether I expect to telegraph you " to-night that I despair of an agreement and give up the " effort."

On the following day, June 20th, I telegraphed him, "I " abandon all hope of arbitration at present. Believing they

" have been amusing me, to gain time to collect money, I " will now amuse them and perhaps learn something."

On June 22nd, Mr. Stewart telegraphed me, "Have to-day " telegraphed Archbishop substance of my telegram to " McEnerney. We regard transaction as closed; think best " you do same."

Here the telegraphic correspondence was suspended, and I resume my narrative. It appears, however, that further despatches passed between Mr. Stewart and the Archbishop, from which the Senator came to the same conclusion that I had reached, viz: that he was being trifled with to gain time and get the whole award into the Archbishop's hands, when they would bring forward other claims till then unheard of; and this led to Mr. Stewart's despatch accusing the Bishop of "*want of frankness.*"

The Archbishop's letter of June 19th was, to me, a surprise, and a painful revelation, for it showed me two persons, believed to be my friends, false to that character, and in secret combination against me. The Archbishop had written me that Mr. McEnerney had declined to speak with him on the subject of his fee just as he had with me. We had been corresponding about it on the basis of the truth of that supposition; for some time back his letters had evidently been framed by counsel, and while I remained perplexed to conjecture who this new adviser was, it now came out that he was no other than Mr. McEnerney himself. I will not pause to characterize this proceeding nor to contrast it with the Archbishop's letter of the first of the month, so gushing with fine sentiments; but only say that it opened my eyes to things, which, had I been dealing with one of a different class, or even with a stranger, I might have suspected before; but of which, dealing with an Archbishop—a disinterested, sincere and candid gentleman, punctiliously honorable and truthful —one who would have preferred to pay out of his own pocket the whole sum in dispute (if he had wherewith), rather than see a difference arise about it, I could not entertain the thought; and even if he had been personally less shielded from suspicion, the high opinion I entertained of Mr. McEnerney would have forbidden me to harbor such a thought of him. But here they stood revealed in their true colors; the one having received from me, in my excessive confidence in his honor, probity, and sense of duty, a power from which he claimed to derive authority to employ counsel, at my expense, for any purpose he might think proper in connection

with the Pious Fund demand, instead of studying to economize my outlay, *as he was in duty bound (for he was but an agent expending his principal's money),* secretly combined with the other, whom he had taken abroad with him in the humble capacity above shown, to elevate that lowly service to the higher level of professional employment, and thus wring from his confiding principal, under the pretense of important professional services, a monstrous fee—*double that paid for identical services to five eminent gentlemen, the members of the court, each infinitely his superior in every respect,* and both of them, for the purpose of carrying out this design, leaving me under the belief—created by their own explicit declarations—that the physiognomist-lawyer had no connection with fixing the amount of the fee claimed for him, and that from delicacy he persistently refused to speak of it with either party! This may be candor, frankness, or anything else praiseworthy or honorable, the Archbishop may choose to call it *in his terminology,* but in the estimate of honorable laymen—the class—confidence in whose truthfulness and virtue holds society together, it will not in my opinion be so regarded.

Thus the effort to arbitrate the sum we should allow for Mr. McEnerney's "services" fell through, and it became evident to me that I had been trifled with all through the correspondence about it merely to gain time and get the money into the Archbishop's hands and then draw some new claims on us. This is clear from the telegrams, between the State Department and the Archbishop. The Department, anxious to see our differences settled, telegraphed the Archbishop, on August 7th, "State Department is especially desirous " of avoiding notoriety in final adjustment of Pious Fund " award on account of its international and historic character. " Counsel for Stewart and Doyle suggests that as you receive " sixty-five per cent, as you direct, they ask that they receive " their twenty-five per cent, less thirty thousand dollars, and " that the last named sum shall remain in the hands of the " Department for further determination. Would be pleased " if matters could be arranged by telegraph, as solicitor for " Department sails for The Hague on August 14th. In view " of your letter to Senator Stewart, of January 14th, and " telegram of McEnerney to him dated January 19th, a " friendly adjustment seems within reach."

To which the Archbishop replied on August 11th, "I am " anxious to avoid contentions and appreciate your feeling.

" I have not received from Doyle or Stewart statement of " their demands. I must await receipt of statement of ac- " count and documents asked for in my telegram of fifth. " Thirty thousand dollars does not cover matters which must " be adjusted. I desire that all shall be closed at one time. " When I receive documents asked for I will make to you or " to them a complete statement of my position. If Doyle and " Stewart desire adjustment, McEnerney is authorized to " represent me. The matter cannot be arranged by telegraph. " Please send undisputed sixty-five per cent, as requested."

I believe nothing further material passed between either of the opposing parties and myself until the 10th of September, when I wrote the Archbishop as follows:

"Most Reverend Archbishop:—I learn that you have " received your Pious Fund money, and to close that busi- " ness, it only remains now to settle the lawyers' fees. I " therefore make my earnest and final appeal to you for a seri- " ous and hearty effort to settle amicably this source of con- " troversy, which is otherwise sure to be productive of evil. " No such effort has yet been made, except Mr. Stewart's " telegraphic attempt, and my vain endeavor to indue Mr. " McEnerney to discuss his fee. Having repelled that, it may " not perhaps be agreeable to him to discuss the matter with " me; but is intercourse between you and me also forbidden? " If it is, cannot some third person be made use of?

"To *drift* into a legal controversy over this business— " especially into an angry and recriminative one—as this is " likely to become *if we drift into it*- will be a shame, and " discreditable to someone.

"Had you kept any one of the many appointments you " made to come here and discuss this subject, between your " return from Europe and your departure for Chicago, we " would certainly have come to a settlement of, or found a " mode of settling, the fees of Messrs. McEnerney and Des- " camps. Of that I have no doubt whatever. Your telegraph " of August 11 to the Secretary that thirty thousand dollars " will not cover the amounts in dispute indicates that you " propose, or have been advised to make other claims of great " magnitude, never intimated to me, and which you foresee " will be disputed. I know not what they are, but whatever " they may be there must be some way of settling them amic- " ably, if both parties so desire. Shall we not at least try?"

On Tuesday, September 15th, the Archbishop wrote me seemingly in reply to the above:

"I hope to have *my* answer to your letter ready by to-mor-
" row evening or Thursday morning. I have been very busy
" since Sunday, and not *very* well."

And under date of Thursday, the 17th of the same month, he sent me the following, evidently the production of Mr. McEnerney, except possibly three or four sentences of mere professions near the commencement, which may be his own:

"I was pleased to receive your letter of the 10th instant,
" which is the first letter I have had from you since your
" letter of July 22nd last.

" I received on last Thursday from the Secretary of State
" $377,253.97. This sum is made up as follows:

" Amount received from San Francisco Mint....	$605,688.65
" Proceeds of payment of February 2, 1903.....	16,416.01
" Total received by Government.....	$622,104.66
" Expenses of Arbitration deducted.....	$ 32,859.66
" Amount withheld to cover the claims of Senator Stewart, yourself and Phillips and Wilson..	211,991.03
" Received by me	377,253.97
"	$622,104.66
" I have paid Mr. McEnerney.....	$ 11,500.00
" and to Chevalier Descamps	5,000.00

"This I have done under the agreement of November 15th.
" 1897, and I expect to deduct those sums from the amounts
" which are due to you and Senator Stewart.

"I very much appreciate your desire to settle the matter of
" counsel fees amicably and shall do everything that I can to
" co-operate with you to that end. I do not understand that
" the intercourse between you and Mr. McEnerney is for-
" bidden, and intercourse between you and me is certainly
" not forbidden. I do not desire the matters in difference
" between us to drift into or constitute a legal controversy.
" I deside to settle the matters between yourself and Senator
" Stewart on the one hand, and myself, justly and without
" any anger or recrimination whatever. It is needless to say
" to you that I have no personal interest whatever (to the
" extent of a dollar) in the Pious Fund. My duty in respect
" to the moneys collected for the account of the Pious Fund
" are simply that of disbursement and application to the uses
" for which the fund was created. If you and Senator Stew-

" art differ with me as to what your rights are it should be " possible for us to settle it without any anger or recrimina- " tion. The mere fact that we differ is no occasion for either " the one or the other. The fact that I do not hold the same " view that you do does not imply any impeachment upon my " part of your good faith. Whatever your rights are you " are entitled to. If we differ we must find a way of settling " matters. It is true that I did telegraph the Secretary that " $30,000 did not cover the amounts in dispute. I wrote to " the Secretary of State that I will give him a full and pre- " cise statement of my position with respect to the rights " of yourself and Senator Stewart. To that end it is neces- " sary that I should have some information from you which " I would be pleased to have you give me.

"1. In a communication dated Washington, D. C., July 31, " 1903, Mr. E. H. Thomas, counsel for Senator Stewart and " Messrs. Ralston and Siddons, stated 'The question respect- " 'ing the fees due the attorneys mentioned in this agree- " 'ment of the annual payment made and to be made by " 'Mexico pursuant to the late award made at The Hague " 'does not seem to be at the present involved in any con- " 'troversy, but no waiver or claim to a proper proportion " 'annually of this income is intended and the right thereto " 'is hereby reserved and asserted.'

"Mr. Thomas also wrote to the Secretary of State under " date of July 1st, 1903, that he was authorized on your behalf " to request the Secretary to withhold one-eighth of the Pious " Fund. It is unnecessary for me to quote from that letter " because you undoubtedly have a copy of it. Mr. Thomas " does not say that you make the same claim that Messrs. " Stewart and Ralston and Siddons do with respect to the " annual payments commencing February 2nd, 1903. I will " be pleased to know whether you claim to be entitled to one- " eighth of the annual payments from February 2nd, 1903, " in perpetuity.

"2. In his letter upon behalf of Senator Stewart and the " firm of Ralston & Siddons of date July 31st, 1903, already " mentioned, Mr. Thomas says that 'valuable services were " rendered by said Stewart and the firm of Ralston & Siddons " whereby great loss in exchange was avoided and over " $23,000 was added to the fund, and for these services my " clients claim an allowance from the fund and a lien thereon " for the reasonable value of such services in addition to the " amount provided in the memorandum of agreement here- " inbefore mentioned.'

" Do you consider that this claim has any validity; and do " you not think that under the agreement of Senator Stewart " and yourself with me that it was the duty of yourself and " Senator Stewart to perform the services for which this " extra compensation is claimed?

"3. I should judge from the claims which are made by Mr. " Thomas on your behalf and on behalf of Senator Stewart " and Messrs. Ralston and Siddons that you claim twenty- " five per cent of the gross amount to the Government and " do not concede that $32,859.66 should be deducted, before " computing your percentage. I desire to know whether " you claim that your percentage is to be computed upon the " gross amount received, or whether you concede that the " expenses of the Government are to be first deducted. I " furthermore desire to know whether you concede that any " part of the expenses of the Government are payable or may " be chargeable under the agreement of November 15th, 1897, " out of the counsel fees.

"4. I desire to know exactly what your understanding of " the effect of the agreement of November 15th, 1897, is.

"5. Lastly. In these matters am I to understand that you " and Senator Stewart are acting conjointly, or that you are " speaking for yourself alone? I enclose you a letter written " by me to Senator Stewart on August 3, 1903, which is self- " explanatory.

" As soon as I receive a reply to these enquiries I will write " you exactly the position that I occupy in the matter. It " will be time enough then to determine how to reach an " adjustment and settlement of them. I shall do all in my " power to settle expeditiously and in justice to you and " Senator Stewart. At the same time if it should turn out " unhappily that we are unable to agree, I hope that the mat- " ter will be settled without anger or feeling. I shall have " none and hope that neither you nor Senator Stewart will " have any.

"In conclusion I have but one thing to say and that is that " I think that your attachment of the fund in the hands of " the Secretary of State was hardly justified. It is entirely " agreeable to me that the money should remain there until " the controversy is settled, but I do not think that you had " any right to attach the money there, and if you had the legal " right to do so, I think the circumstances were such that it " was uncalled for.

"Permit me to add just another word in answer to some "observations contained in your letter of September 10th. "I do not think I could have done more than I did to bring "about a settlement of the fees of Messrs. McEnerney and "Descamps. Surely after my return from The Hague I asked "your advice on the subject. You *most emphatically* refused "to give me any. I then proposed a mode of settlement "which you also rejected, namely: that you were to select "five or six prominent attorneys of San Francisco who were "agreeable to you and I was willing to take one of them and "leave the entire matter to his judgment and decision. I "then proposed Judge Seawell as an arbitrator in the case. "You accepted him and when you sent me the agreement to "be signed you attached to it so many conditions entirely for-"eign to the matter which was to be submitted to Judge "Seawell, that I refused to sign it. I could do nothing less. "I have no wish I can assure you to drift into a legal contro-"versy over this business, but if such is the outcome, they "will be to blame who have already invoked the power of "the law."

I not unnaturally somewhat lost my temper at this evident prevarication and attempt to entrap me, and on the following day replied as follows:

"You have so many things to do that I do not wonder that "your memory goes astray. I gave you *in writing* my appre-"ciation of the fees proper to be paid to Chevalier Descamps "and Mr. McEnerney. You are also in error as to the fail-"ure of our efforts to arrange an arbitration; it was your-"self, not I, who broke it off; I believe there is another such "instance of misrecollection in your letter of the 17th inst., "but these things are of no consequence, and to discuss them "would be a mere waste of time.

"Your telegram to the Secretary, of August 11th, promised "that when you received the documents asked for, *you would* "*make to him and to us a 'complete statement of your posi-*"*tion.'* You have long since received the documents, and I "learn that 'your complete statement' was regarded in "Washington as *due* there on the 16th inst., for which pur-"pose it would have to be mailed, in San Francisco, by the "11th. When I wrote my appeal to you for an effort at an "amicable settlement, I supposed that, if you favored such "a course, you would not probably object to letting me see "a copy of the 'complete statement' a few days before it

" could be received from Washington by mail, and such I " supposed to be the meaning of your brief autograph note " of the 15th inst. Your letter of the 17th, however, instead " of a statement (complete or incomplete) of your own posi- " tion is made up of enquiries from me, as to what I claim " and how I understand, etc., as if the writer was unable to " tell your thoughts until he had first heard mine. I recog- " nize of course the draftsman and the motive; but having " nothing to conceal I will answer his questions just as if " I had fallen into the trap he so cleverly laid for me. But " neither my appeal for an effort at settlement, nor anything " I may do or say, must be made an excuse for deferring " your promised 'complete statement' to the Secretary. Your " attorney is playing for delay; but I must not be used to aid " his game. I am not acting conjointly with Senator Stewart; " and have no authority from him; my appeal for an effort at " settlement was and is entirely personal—though if I should " be able to agree on one, I am of opinion that Mr. Stewart " would come into the arrangement.

"I know nothing of his claim, and have no interest in, or " opinion about it. The payment to Messrs. McEnerney and " Descamps eliminates them from the controversy reducing " it to the question I originally stated, viz: *how much of the* " *sum you choose to pay them should be charged to Mr. Stew-* " *art and myself.* My understanding of the effect of our " joint letter of November 15th, 1897 (which you erroneously " call a contract), I explained sufficiently in my letters of " January 31st, and May 18th, last, to which I refer you.

"Perhaps you may remember that in the conclusion of my " letter of May 18th last, speaking of the actual intent and " purpose of our joint letter of September 15th, 1897, I said, " 'It may be suggested to you that the words of our letter " 'are broader than the intention above named. Very likely; " 'but I am speaking of its construction as between gentle- " 'men and friends—honorable men on both sides.' To the " suggestion of this rule of construction I received no answer, " and in such a case silence can only be understood as a " refusal. As the articles of war are the only legislation " that I know of which recognizes or seeks to enforce a stand- " ard of morals higher than the civil law, and they have no " application to us, your refusal of the construction suggested " by me, as above, leaves no choice but to claim all my legal " rights. These extend obviously to an eighth of all money " recovered and collected from Mexico past and future; sub-

" ject of course to any deduction you may be lawfully author-
" ized to make therefrom. Amicable settlement implies con-
" cessions on both sides, and for a settlement, I am prepared
" to make my share of such.

"If you share my desire for such settlement, send me some
" gentleman familiar with ordinary business, and who under-
" stands the case, and desires to promote peace; with such a
" person I am persuaded I can agree. To do it by corre-
" spondence would be too tedious to be practicable."

On Sunday (27th) I received the following on a scrap of paper, "Sep. 25, 1903. Mr. John T. Doyle, Menlo Park, Cal.
" Dear Sir:—Enclosed please find copy of the letter of Mr.
" Garret McEnerney to the Secretary of State of date Septem-
" ber 24th, which copy I have been requested to forward you.
" Yours truly, E. P. Mulligan, Secretary. Kindly acknowl-
" edge receipt."

I think a peasant from the wilds of Cannemara should have known better than to send such a paper. On the following morning I wrote the Archbishop as follows:

"Most Reverend Archbishop:—In your letter to me of
" September 17th you say, 'as soon as I receive a reply to
" 'these inquiries *I will write you exactly the position* that I
" 'occupy in the matter.' My answer to that letter replying
" to all your inquiries, under date of the 19th inst., must
" have reached you on the 21st inst. You have never acknowl-
" edged the receipt of that letter, nor—unless the post has
" miscarried—have you written me a word as to your posi-
" tion in the matter referred to. Permit me to remind you of
" your promise and claim its fulfillment.

* * * * * * * * * *

"If you mean to be understood that the letter of Mr. McEn-
" erney to the Secretary of State dated September 24th, 1903,
" is to be deemed the full and precise statement of your posi-
" tion, with respect to the rights of myself and Senator Stew-
" art, promised by you, I think I am entitled to have it under
" your own hand as you promised to furnish it."

The Archbishop's response to this was dated September 30th, and reads as follows: "I received last evening your
" letter of the 28th inst. I beg leave to reply to it as follows:

"I regret that the letter of my Secretary, Reverend P. E.
" Mulligan, was not more explicit. He should have added,
" that the document which was sent with it, was sent to you
" at my request. The document was prepared by my attor-
" ney, Mr. Garret McEnerney, and was sent to me for my
" approval. I was in the country at the time and having

" read it, and approved of it, I requested Father Mulligan, " by letter, to have a copy of it made immediately and sent " to you. Similar copies were sent to the Secretary of State " and to Mr. Stewart. The document you received, as pre- " pared by Mr. McEnerney, has my approval, and is a state- " ment of my position with respect to your rights, and those " of Senator Stewart. I beg of you to receive it as such."

In this letter Mr. McEnerney made out an account of which the following is a copy:

"The foregoing states the position of the Archbishop " and the Bishop.

"The amount is, therefore, as follows:

" The contract of December 24, 1889, calls for the
"the payment to Mr. Doyle and Senator Stewart
"of $91,771.00
" From this sum should be deducted... $32,859.66
" Paid M. le Chevalier Descamps..... 5,000.00
" Paid Garret W. McEnerney..... 11,500.00
" Paid Mr. Belloc and Miss Walshe
"(about) 1,000.00
——————— 50,359.66

" The net balance to be paid Messrs. Doyle and
" Stewart is therefore..... $41,411.34

On October 2nd, I replied to this: "I acknowledge receipt " of your letter of September 30th, declaring that that of " Mr. McEnerney to the Secretary of State dated September " 24th, had been submitted to you for your approval, was " read and was approved by you and that it is a statement " of your position with respect to my rights and those of " Senator Stewart, and to be received as such.

"To bring this disagreeable business to a close I must " request you to consider any power or authority to do any- " thing ever given you by me as absolutely revoked, cancelled " and annulled."

On October 8th, I made my last appeal to the Archbishop, as follows:

"Most Reverend Archbishop:—I want some money and " would like to draw so much of the Pious Fund recovery, " in the United States Treasury, as the figures on your recent " statement to the Department show to be undisputedly mine, " say twenty thousand dollars or so. This will require your " consent, a paper expressing which I enclose for your signa- " ture, if you will give it.

"In this connection I will take leave to remind you that but " for me the Pious Fund would have been irretrievably lost. " My telegraph of March 28th, 1870, just saved it. I alone " carefully studied, learned and wrote the history of the fund, " invented the form of claim on which alone we could have " recovered, and did recover in both the litigations over it, " my associate in the first case unintentionally doing his best " to make shipwreck of the case. As the Church of Cali- " fornia is clearly indebted to my thought and effort for all " that she has recovered, or ever will recover from this source, " I think I may claim some consideration from her repre- " sentative, at least so far as letting me have so much of " my fee as is undisputed. I am out of pocket several hun- " dred dollars and in debt besides in the case. The receipt " of the money will be quite a convenience to me, for, wanting " it, and unwilling to borrow, I must otherwise sell prop- " erty."

On the 12th of the same month he answered: "I am in " receipt of your letter of October 8th, and beg leave to " answer as follows: If you had permitted the moneys " recovered in the Pious Fund suit to be sent to me for dis- " bursement, I should be willing to pay you and Mr. Stewart " so much of it as is not in dispute; but you thought fit, with " Mr. Stewart, without consulting me or even notifying me, " to tie them up in the hands of the Government, thus cast- " ing a suspicion on the honesty of the prelates, or on the " solvent condition of the Church in this State. Mr. Stewart " and you seem to be afraid if the counsel fees were once in " my hands you might not be paid. I can assure you that " they would be as safe with me as they are in the hands of " the Government. I do not see any course to pursue in this " matter except to ask those who tied up the moneys to " release them.

"I refuse therefore to change even partially a condition of " things for which I am not responsible. Mr. Stewart and " yourself are alone to blame in the matter.

"In justice to the Church in California you might have " added to your statement, 'That for all I did for it, I was " most generously paid.'"

My reply to this, the last communication between us, was as follows:

"I acknowledge receipt of your letter of the 12th inst. I " have long since realized the truth of the supplement some " wit added to the Beatitudes, 'Blessed are those who expect

" 'nothing, for they shall not be disappointed.' I did not " allow myself to build on your consent to pay me what you " admit to be due, but thought it only right to give you the " opportunity to do the right thing, if you were so disposed. " The case affords a repetition of the farmer's experience, " who after returning from market announced to his neigh- " bors, 'My pig did not turn out to weigh as much as I thought " 'he would, and I never expected he would.'

"I note your expressed willingness, if the money were " remitted to you for distribution, to pay Mr. Stewart and " myself so much of it as is not in dispute; but this is only " another instance of the inaccuracy of your memory, attrib- " utable doubtless to your many occupations and cares. Your " offer, in Mr. McEnerney's letter to Mr. Secretary Hay of " September 24th, which you told me to consider as a state- " ment of *your* position in respect to my rights and those of " Senator Stewart, was to pay us this undisputed amount '*in* " '*full of all our services and demands to date.*' That is you " would pay what you admitted to be due us, on condition " that we abandon all claim to all we claimed which you dis- " puted. Most liberal Archbishop, I thank you!

"The stoppage of my money in the hands of the Secretary " was no imputation on your integrity; but you had informed " me of your intention if you got hold of it, to squander it on " undeservers, which would have remitted me to a law suit " against you if I disapproved the payment. I told you that " if there was to be litigation over the affair, I preferred to " have it in Washington, and to that end I stopped it there.

"There was no time between your return from The Hague " and the receipt of the money in Washington, that this whole " business might not have been settled by amicable agree- " ment, and it would have been, had you kept any one of the " numerous promises you made me to come and see me about " it. I waited for your coming several months, and about six " weeks before the money was due, learned that you had gone " off to Chicago for a month! I tried then to settle with Mr. " McEnerney at least; but he—disinterested man—refused " absolutely to speak a word about his fee. The utmost he " would do as to any proposal of mine looking to its ascer- " tainment was to submit the suggestion to you as coming " from me! It was evident to me that I was trifled with by " someone and to end such a stupid embroglio, I revoked " whatever powers you might have from me about it. I knew " when I did it that it was an unpardonable sin, and your con- " duct to me ever since has confirmed the opinion."

I have perhaps omitted to mention in a more appropriate place that Mr. McEnerney, who left here for The Hague on the retainer of Mr. Stewart and myself and to be paid by us, had returned home after a tour of a large part of Europe (also at our expense) already employed and retained against us by the Archbishop on this question of the amount of payment of our fees, and this without disclosure or intimation of his changed position to either party, the propriety of which proceeding I leave to others to judge. All I claim in this connection is that it was a most unhandsome thing for him, after being brought into the case by me, to take a hostile attitude to Mr. Stewart and myself, without apprising us of this change of front. I attribute this fault or omission to Mr. McEnerney personally, for the Archbishop by persistently shunning me after his return from The Hague, gave me sufficient reason to suspect his ingratitude and possible hostility.

This then was the condition of the business in the winter of 1903-4. The Archbishop had with our consent received his undisputed portion of the money collected from Mexico; the twenty-five per cent, belonging to Mr. Stewart and myself, remained in the hands of the United States, withheld from us by his objection to its payment; about $20,000 of it on the grounds, reasonably the subject of difference, and the rest on a preposterous claim that our fee was, by the contract, limited to an eighth each of the *amount due by Mexico at the time our contract with him was signed,* being twenty of the thirty-three years' back interest we had recovered. He admitted, however, in any calculation there was due us $41,411.34, but objected to our receiving that amount as *he preferred* to have the settlement, when made, a complete one; that is, he objected to paying us what he admitted was due because he did not want us paid it. He preferred to keep us in want of it. Nothing else.

The necessity of attending certain of the International arbitral courts convened at Caracas, to pass on claims against Venezuela, called Mr. Ralston and Mr. Sherman Doyle to that city, where they were detained for many weeks. Mr. Penfield, solicitor for the State Department, was also absent from Washington, and Mr. Hay preferred to await his return before acting on our application for a distribution of our undisputed portion of the money in his hands; hence there was a suspension of proceedings in this Pious Fund case until

these parties returned. It happened, however, that Mr. Kappler had occasion to visit San Francisco in October, 1903, and while here he made an effort to settle amicably these disputed points, for which purpose he met Mr. McEnerney, representing the Archbishop on two occasions. It is unnecessary to enter into the details of these attempts to agree, which were not successful. The only matter of any consequence occurring in them was that Mr. McEnerney stated that the author of the contention that Mr. Stewart and myself were entitled to participate only in so much of the recovery as was due on December 24th, 1889, when we signed our contract, *was the Archbishop himself!* and that he had returned from Europe after the close of the proceedings distinctly intending to pay us no more than that amount: a fact of which he failed to give us the slightest intimation, during the many succeeding months that he was trying so hard and so unsuccessfully to see me.

Arbitration of our differences was suggested; but Mr. McEnerney would not agree or even discuss that suggestion unless we would commence by renouncing all claim to share in the instalments maturing in the future, which was, of course, to decline it entirely. His claim was that the award for future instalments of interest was not within the scope of the arbitration and that the award on that point was *ultra vires*, and, to that extent, void. The invalidity of the award did not, of course, deter the Archbishop from drawing the money *paid under it.*

After the return to Washington of those above mentioned as absent the Secretary of State examined the papers in the case and observing that our right to the $41,411.34 above mentioned was absolutely undisputed, directed that money to be paid us at once, and on January 11th, 1904, we were each paid one-half thereof. He then determined to bring this unseemly controversy to a conclusion and for that purpose to submit it to the Court of Claims, which may be done under either of two statutes, viz., either by consent of all the parties concerned, or without such consent. The effect of the decision is conclusive in the one case, advisory to the Secretary in the other. Hence on March 19th, 1904, the Secretary addressed an inquiry to each of us, asking if we consented to such reference.

Mr. Stewart, Mr. Ralston, Mr. Kappler and myself consented. The Archbishop, or his adviser, discovered a way to

neither assent nor dissent, but postpone. He sent a telegram to the Secretary saying that the Court of Claims should not be consulted at all in the case, for which he would give good reasons, if allowed till the 15th of May; by that time he would be in Washington, call upon the Secretary personally, and impart to him the reasons referred to, but he could not then go to Washington. The object of this was delay alone; nothing prevented his writing his reasons if they were honest ones. The Secretary probably perceived this, for though he acceded to the postponement asked, notified the gentleman that no further delay would be granted. This much being gained, the Archbishop and Mr. McEnerney started together for Washington on or about the 4th of May, but parted company as they approached the city arrived at an interval of a few hours apart, Mr. McEnerney coming first. Somebody (it is easy now to conjecture who) had apprised Mr. George E. Hamilton, the Archbishop's counsel in the Wilson case, of the expected arrival of Mr. McEnerney in Washington, and his business there, and Mr. Hamilton apprehending a Church scandal, as liable to arise from the proposed meeting and contention, before the Secretary, or very probably at the suggestion of his client, intervened and brought about a meeting between some of the contending parties in his office. The invitation to meet included the Archbishop and Senator Stewart, but the former did not attend; Bishop Conaty, newly appointed to the diocese of Monterey, appeared in his place and Mr. Ralston appeared with Senator Stewart. I was not deemed worthy to be invited to, or advised of, the meeting, nor was Mr. Sherman Doyle, who was in Washington and who might have represented me, admitted to it, although my interest was just as large pecuniarily as that of all the other lawyers combined, and he was my representative and was on the spot. A compromise was agreed on between the Archbishop's representative and those representing the interest in the fund that was originally Mr. Stewart's by which the objections to the monstrous and wrongful payments to McEnerney and Descamps were withdrawn, so far as he was concerned, and those payments were to be allowed by the Senator. His claim to participate in the future instalments was surrendered by him and he agreed to accept a settlement on the basis of one hundred and twenty-five thousand odd dollars in gold for both our fees arrived at as follows:

Total gold received for thirty-three installments of interest. $605,688.68

Deduct The Hague expenses advanced by the Government		32,859.69
Leaving		$572,828.99
Due Messrs. Doyle and Stewart 25 per cent of this		$143,207.25
To be paid out of their fees, viz.:		
Descamps' fee	$ 5,000.00	
McEnerney's fee	10,000.00	
" traveling expenses (no voucher)	1,500.00	
" translator and stenographer (no voucher)	1,000.00	$17,500.00
To be paid Messrs. Doyle & Stewart, in discharge of all demands		$125,707.25
Received January 11, 1904, from the Secretary		41,411.34
Leaving due at date of settlement		$ 84,295.91
Of which Mr. Stewart received one-half, say		$ 42,147.95

The figures above given were sent me by Mr. Sherman Doyle, after the settlement with Stewart had been made. During the negotiations, I received the following telegrams which tell the story more briefly than I could relate it:

I.

WASHINGTON, D. C., May 11, 1904.

JOHN T. DOYLE, Menlo Park, Cal.:

"Ralston and I had lengthy conversation with McEnerney, Conaty and Hamilton yesterday. They refuse absolutely to consider claim on annuity; result was we stated we would not consider less than one hundred and twenty-five thousand five hundred dollars. This morning after their consultation with Riordan, who arrived in the city after conference, they notified us they would pay one hundred twenty-five thousand five hundred dollars and not a penny more. This means we get twenty-five per cent of thirty-three instalments less one-fourth of Hague expenses, and McEnerney-Descamps fees and expenses, leaving us net balance at this time of eighty-four thousand two hundred and ninety-five dollars and ninety-one cents. Ralston, Siddons, Kappler and I strongly advise you joining us in accepting amount named. You are in no way bound by conference or settlement made thereat. If you refuse proposed settlement it will probably embarrass any settlement in my behalf. Please telegraph answer."

(Signed) WM. M. STEWART.

II.

MENLO PARK, CAL., May 12th, 1904.

WILLIAM W. STEWART, Washington, D. C.

"Will Archbishop give his personal assurance that, when executing contract of eighty-nine, he understood it, and believed we understood it to limit our fees to quarter of twenty installments."

(Signed) JOHN T. DOYLE.

III.

WASHINGTON, D. C., May 13th, 1904.

JOHN T. DOYLE, Menlo Park, Cal.

"Archbishop refuses personal assurance. I have settled on basis indicated. Same offer remains open to you. Bishop leaves to-morrow."

(Signed) WM. M. STEWART.

I learned that a reference to the Court of Claims would involve an adjournment of decision for probably five years; and I would thus, unless I accepted this proposal, find all my time, between the ages of eighty-five and ninety, if I survived so long, bespoken for a law suit in Washington. I had no motive in the world for occupying the short remnant of my life with a controversy of this kind, and after waiting a few days, and considering the matter at leisure, I sent power to Mr. Sherman Doyle to accept the settlement and execute in my name any papers needed for that purpose. He signed everything, and received a warrant on the Treasury for the money they made out to be due me, after deduction of Descamps' and McEnerney's exactions.

This concludes the narrative of the facts, and I now venture some remarks on the final conclusion of the case.

First as to our joint letter of November 15th, 1897, which the Archbishop undertook to consider a supplementary contract, the fees paid to Messrs. McEnerney and Descamps, and the Archbishop's conduct in regard to the payment of these fees and in and about the final settlement.

We were not at the time of writing that joint letter, thinking of counsel for the argument of our case before a court; had no such idea in contemplation. We had no case to argue; there was no court either in existence or probable before which our case could come. Our hope and expectation was by the earnest and persistent urgency of our Government, to obtain a settlement from Mexico. Hence the power to select and employ additional counsel should be deemed limited to

the object we had in view and were pursuing when granting it, not extended by construction to a totally different occasion arising afterwards and under entirely different and unforeseen circumstances. This I think very plain.

In this connection it is material to observe that no right of third persons is here affected. The question is between the grantor and grantee of the power, where the intent of the parties alone must control its interpretation. It was given, too, voluntarily and without consideration, and its meaning should not be extended beyond the exigency that gave rise to or was contemplated in it. For the same reasons it was always revocable.

When the Archbishop finally decided, on November 23rd, 1900, to continue Mr. Stewart in the case, to accept his selection of Mr. Ralston, as the additional counsel, and employ no other, I considered, and still do, that that was a complete exercise of his power of appointment, and exhausted it unless Mr. Ralston failed to secure the desired attention of the Department to the case and it proved necessary to replace him.

The joint letter of November 15th, 1897, the Archbishop in his telegram to the Department of August 6th, 1903, calls a "supplementary contract"; I do not so regard it. It was practically a tender by Mr. Stewart and myself of our resignations as counsel in the case and a power to the Archbishop to employ others in our stead, and to do whatever else it lawfully authorized him to do. In considering its scope and effect as a power, the condition of the claim at the time it was given and what was needed or contemplated at that time should be kept in mind and its scope should not be extended by implication beyond the needs of the occasion. That situation and those needs were perfectly understood by the Archbishop and myself.

It will be seen that the trouble we were in arose entirely out of the difficulty we had experienced in inducing our own Government to take a serious view of our claim and act on it with earnestness and vigor. This we (the Archbishop and myself) attributed to the multitude of claims on the attention of the head of the State Department, and the consequent need of frequent and persistent recurrence to it to prevent its being forgotten or overlooked.

For this we had relied from the beginning on Senator Stewart, whose official and social position in Washington would, we believed, secure attention to his representations.

Thus, then, the matter stood from the close of November,

1900; the Archbishop had decided (and made known his decision) not to treat the joint letter as a resignation of Mr. Stewart and had exercised the power it gave him of employing new counsel, by the acceptance of Mr. Ralston as such, on Mr. Stewart's nomination. He contended that he had also the power of employing additional counsel at our expense, if he thought it needful, and, so far as related to efforts to secure the active pressing of our claim on Mexico, I do not care to dispute it; but, as the negotiation with that country proceeded to a successful termination without such employment, that question is of no consequence. His power to employ counsel, so far as such power existed, had been fully exercised, and was exhausted.

Considering the intimate and confidential relations between the Archbishop and myself for many years preceding his departure for The Hague in August, 1902, I felt warranted in claiming for the letter of 1897 such construction as it would receive between gentlemen and friends. He never answered that suggestion, and his failure to do so was, of course, a rejection of it and will probably be understood to put me at arm's length, though I did not at the time so consider it.

I should also say here that down to this time I had an impression that our contract (which I had not looked at for a very long time) used the words "net proceeds," or equivalent expression, which, in effect, called on Mr. Stewart and myself to pay the fees of counsel at The Hague. For this reason and from a feeling of its intrinsic reasonableness, and that, if paid our stipulated fee we could afford to pay any reasonable expense incurred in good faith for the cause, I was entirely willing to be taxed for such a fee for each of the gentlemen who spoke at The Hague. It was only on the 3rd or 4th of August last, when it became a choice of impounding our money in the hands of the Department and having it recklessly squandered on undeservers by the Archbishop that I looked at our contract to see and claim its exact terms, and, by telegraph to Senator Stewart, called attention to them. I must, however, say that from the time The Hague arbitration was agreed on I have always felt that in justice Mr. Stewart and I ought to pay the reasonable fees of counsel employed for the argument there, and I believe that Mr. Stewart shared this sentiment. Indeed, I have often expressed my willingness to be charged with such, and this compels me to consider the reasonableness of the charges made by the Archbishop for the services of Messrs. Descamps and McEnerney, which I will now proceed to do.

As to Mr. McEnerney: The circumstances, terms and object of his employment and the services actually rendered by him must all be considered.

The circumstances of his employment have already been related on pages 14, 15 and 16 and need not therefore be repeated here. We had no more need of Mr. McEnerney's services on the argument than a stage coach has for a fifth wheel. What could he contribute to our success that we had not already? I could not then, nor can I now, imagine anything. Why, then, did I consent to take him into this case? Solely to gratify the Archbishop (who wanted someone to sustain his courage), and at the same time to do a service to a rising man of talents, whom I esteemed, by putting him into a position to connect his name with a case that would surely be historical, as the first under The Hague treaty. I supposed that the Archbishop's motive for selecting him was gratitude for past gratuitous services, and I still continue of that opinion and will so continue until I shall have had a full opportunity to interrogate the most reverend gentleman on the subject, and he denies it and gives another explanation. That Mr. McEnerney was gratified by the position cannot be doubted by anyone who recalls the newspaper flourish of trumpets over his triumph in the case after his return, which must have proceeded from himself or someone close to him.

Mr. McEnerney's labors in the case, for which Mr. Stewart and I have been called on to pay and have paid ten thousand dollars, besides fifteen hundred dollars for traveling expenses are historically as follows:

The members of the court met on September 1st and chose the umpire, in which proceeding neither Mr. McEnerney nor the Archbishop was permitted to take any part. I believe the latter tried to do so, but was snubbed for impertinence.

Some portion of the time between August 25th and September 15th, the whole of which Mr. McEnerney ought and part of which he must have devoted to the study of the Pious Fund case, endeavoring to acquaint himself with its historical details. In course of doing this, he constructed, I believe, what might be called an historical card index to it, and proceeded to reduce to writing his study of the case in historical form. It is presumable that he intended or expected to make this the basis of a brief on the questions involved and submitted to the court by the protocol, which he might present at a future day. That historical study was not completed by

September 15th, and down to that date he had no expectation of making an oral argument in the case. This he mentioned, as I have been informed, more than once to the gentlemen concerned in it on our side, saying that he did not intend to make any argument; that he had not come there for such purpose; that he had come only as a friend of the Archbishop, etc. So clearly was this understood that when he changed his mind a separate telegraph had to be sent to the Department, asking that his name be added to the list as also of counsel for the United States.

On September 15th, French was announced as the language of the court, with the privilege of addressing it in English by counsel who desired to do so. On this announcement, Mr. McEnerney appears to have decided to avail himself of the privilege and speak. The order in which the speakers on our side should succeed each other was, of course, with Mr. Ralston as the official organ of our Government, and it was arranged by him that Senator Stewart should open the case, followed by Mr. McEnerney and then himself, the reply being reserved for Judge Penfield as the law officer and representative of the State Department. Hence, Mr. McEnerney had to commence his discourse on the conclusion of Senator Stewart's argument. At that time he had not completed the paper I have called his study of the case, and probably had not even commenced a brief on the two questions presented in the protocol. Called on under these circumstances to speak, he gave to his paper, which I have called a study of the case, the title of "*Supplementary brief on behalf of the United States,*" sent it to the printer, and had proof sheets of it, as far as set up, with him when he made his address. These he used as notes from which to speak, enlarging and expanding as he saw fit, and thus he occupied the residue of the 17th and all the fore part of the next adjourned day, which was the 22nd.

This acceptance of a sudden call to speak, by one only half prepared to do so, accounts logically for the diffuse character of his address and for its failure to treat the questions propounded in the protocol. He was not ready to discuss them; had not quite completed his preliminary historical study of the facts of the case; had not time to curtail or condense such parts of it as were unnecessary for the discussion of the merits of the question. The bulk of the printed supplemental brief and his oral discourse repeating it is taken up by matter useful and pertinent on the former trial, *but, of the present one, quite "from the purpose."* This will be seen from

an examination of the first forty-two pages of the "supplemental brief" and the first thirty-nine pages of the oral discourse, as reported in the *proces verbal* (Vol. II, pp. 42 to 81). To the casual reader they present a great display of minute historical learning on the subject, but as the material was all of my discovery and compilation and furnished him by me in print, together with the arguments of the case before the arbitral tribunal of 1868, and was no longer in issue here, I am at a loss to see why I should be charged a sum so large as ten thousand dollars for making extracts from my own arguments. (See Vol. I, pp. 280, 462, 557 and Vol. II, Mr. McEnerney's Supl. Brief, pp. 26, 32-3, 37, 55, 59, 60, 64, and *proces verbal*, pp. 49, 50, 71, 75, 76, etc.) It is really a charge against the housekeeper for his "funereal baked meats" served up to "coldly furnish forth a marriage table."

All that Mr. McEnerney had to say on the questions propounded to the court in the protocol, is contained in his "supplemental brief" with extreme prolixity. It would almost seem that he supposed that he was addressing judges who knew nothing of the principle of *res judicata* and needed explanation of each elementary truth alluded to before them. This is in fact a leading characteristic and grievous defect in all his argument, and doubtless arises from the fact that he was called on to speak before he was prepared to do so, and in order to avoid omitting anything material had to relate all he had learned about the case, whether pertinent to the question before the court or not. In fact, all of his discussion of the questions presented might have been compressed into a dozen printed pages.

I allow nothing for efforts to gain an advantage by securing the selection of a friendly umpire, for I neither gave aid nor countenance to such and if that was not the object, I would respectfully ask what in the world was the object of the movements and efforts of the Archbishop and Mr. McEnerney between the time of their arrival in Europe, August 12, and their appearance at The Hague, August 25? Where did they spend their time and what they were doing? Had the latter given his time to the study of the facts furnished him in print with the authority and translation, he never could have fallen into the shocking historical mistake of attributing to the Spanish Crown the decision that the Jesuits might invest the sums contributed to the Pious Fund, in real estate; whereas he had the printed proof in his hands that such determination was made by the council of the society with which the Crown had nothing to do.

When, on June 12th last, the Archbishop named ten thousand dollars as the price he set on Mr. McEnerney's services, I told him that I put them at five thousand, promising to give my reasons therefor afterwards. I never did give him such reasons, because our correspondence strayed away from the subject and no suitable opportunity recurred for it. I shall therefore give them here. The Government had invited five very eminent European publicists to act as judges in this case and by common accord, after it was decided, each of them was paid an *honorarium* of five thousand dollars for his services. those who came from a distance being also paid an additional thousand dollars each, to cover expenses, travel, etc., Now, the studies of these five judges, the sources of their information, and the time necessarily consumed by them in the business of the arbitration were as nearly as possible identical with those of Mr. McEnerney and, as it could not be claimed for him that in seniority, position, standing in the profession, reputation, talents, attainments, or in any respect, he was the superior of any of those gentlemen, even if he could, as a matter of courtesy, be counted their equal (which I do not admit), I took their compensation as the standard for his, which I thought and still think did him no injustice.

The only argument for this monstrous fee for Mr. McEnerney that I have seen advanced is intimated in the Archbishop's letter of June 16th, 1903, viz: that his employment withdrew him temporarily from his ordinary practice which, as the Archbishop expresses it was "rather lucrative." But, if a professional man, whose practice of his profession is "rather lucrative" chooses to withdraw temporarily from its pursuit and accepts either from motives of friendship or any other an humbler employment as *e. g.*, that of a physiognomist, wherein his services are of no use, what has his lucrative practice to do with his compensation in the new occupation?

It may be said that I expressed myself otherwise about the merits of his speech in my letter to the Archbishop of January 31st last. I spoke of it in a general way somewhat favorably, for, although sadly disappointed by its emptiness, I believed its author my friend and naturally strove to conceal that feeling under general words of no special significance. Neither was I concerned with how much the Archbishop should pay him, but only with how much of such payment should be charged to Senator Stewart and myself. I am sure that in offering to allow five thousand dollars for it I was more than liberal, for as a contribution to our success it was really *nil.*

To appreciate these merits, we must first look at the issues or question to which he was called on to speak; for all discussion of matters not pertinent to the questions before the court is waste of time, vexatious and harmful.

The questions which the court was required to pass on were clearly defined in the protocol, viz:

1. Whether the present demand for the unpaid interest on the Pious Fund is, as a consequence of the former decision, "within the governing principle of *res judicata;*" and,

2. If not, whether it is a just claim.

3. The tribunal being authorized to render such judgment or award as may be meet and proper under all the circumstances, this power necessarily opens a third question, viz: In what money should judgment against Mexico be expressed.

These were absolutely all the questions presented to the court. All other discussion was clearly "*from the purpose.*" How did Mr. McEnerney treat them? He commenced with an historical review of the creation of the Pious Fund for the support of the missions in California, the changes in its investment and management and the discussion of questions which either had been or, as he thought, might have been raised at the former arbitration; and after occupying some forty pages in those merely academic questions he comes down on the fortieth page of his oral discourse to what he very properly said "*we conceive to be the controlling question in the case,*" viz: the first question propounded in the protocol for discussion as above stated. On this question he then advanced four propositions, viz:

1. That the principle of *res judicata* applies to international arbitrations.

2. That the former tribunal had jurisdiction to make the award it made.

3. That the force of the principle of *res judicata* extends to all matters necessarily included in the condemnatory part of the judgment.

4. That all matters necessary to an award here in favor of the United States, except the one question of non-payment since February 1st, 1869, were necessarily determined in and were organically a part of the former award.

After thus with great formality advancing these propositions, he avoids discussion of them by saying he "leaves " their 'extension' and amplification for the other counsel, " particularly for the learned agent of the United States, " who has given this question the careful and diligent and

" learned investigation which its importance and far-reaching " effect demand."

Mr. McEnerney would not, I feel confident, argue in this style before the Supreme Court of California, nor before any tribunal known to be composed of sound lawyers; and I cannot but think that addressing such men as Sir Edward Fry, a former Judge of Appeals of the High Court of Justice of England, Mr. De Martins and President Matzen, and their associates, Mr. Asser and Mr. Lohman, it would have been quite safe and much wiser to assume that they were acquainted with the principles acknowledged as fundamental in every system of jurisprudence and not weary them with proofs or restatements of such matters.

Mr. McEnerney, more than any other, is in my opinion responsible for the money in which our recovery is expressed, for in consultation he opposed any discussion of that question, and, backed by the Archbishop, his counsel prevailed. This blunder cost us nearly sixty per cent of our award as we were clearly entitled to a judgment for Mexican gold.

My opinion of Mr. Descamps' services, and their value, remains as expressed in my letter to the Archbishop of January 31, '03 (p. 18). His argument as pronounced in court and reported by the stenographers, is one of the most wordy and worthless I remember ever to have read. There are some passages in it which in our language would be considered nonsense. Perhaps they may pass, as coming under the head of *"hyfalutin."*

The official minutes of the court, and the printed *proces verbal* of its proceedings, state that when it met for business on September 15th, note was taken of the names, etc., of the parties appearing as counsel, etc., and among them figure "M. " le Chevalier Descamps, Senateur du royaume de Belgique, " Secretaire Generale de l'Institut du droit International, " membre de la cour Permanente d'arbitrage." Such, therefore, are his titles. In the trial of this case the practice was adopted of having the stenographers write out the remarks of each counsel, as speedily after the close of the day as practicable, and handing the same to the speaker for correction, which was expected to be completed inside two days. The corrected MS. then went to the printer and was set up and ready for issue the next day or next but one thereafter. This course was taken with Mr. Descamps' remarks, as with the others. But when the typed MS. furnished him by the reporter was due, he was not ready to return it, and asked

further time. At the end of the extended time (the Chevalier had meantime gone to Belgium), the printers telegraphed for it, but without success, and after having held the press back several days waiting for him, they finally printed his speech as reported, and proceeded with the printing of their report of the proceedings. Just before the court's announcement of its decision, about October 12th or 13th, Mr. Descamps reappeared at The Hague with a printed version of his speech in pamphlet form, very different from the speech actually delivered by him, *and he induced the printers to substitute this version for the matter which they had already worked off in the proces verbal.* It was much shorter than the original speech (which was conspicuous for its diffuseness and garrulity), and differently arranged. Even the revised speech is a poor affair enough, but as it was only made public after the decision had been made, and ready to be published next morning, it can, by no stretch of courtesy be called the Chevalier's speech, nor can he have any credit for it as a contribution to our success. I am not alone in this judgment of Mr. Descamp's garrulous prolixity. On page 309 of the *proces verbal* it will be seen that he was distinctly rebuked for it by the president of the court, who, at the opening of the session on September 30th, whereat Mr. Descamps was to resume his speech, said, after announcing that thereafter the sessions would be continuous, "*Le tribunal, sans vouloir en aucune* "*maniere enchainer la liberte des orateurs, et tout en res-* "*pectant leur liberte, exprime le desir que les conseilles* "*veuillent bien, dans leurs discours, eviter, autant que pos-* "*sible, des repetitions inutiles.*" (The court without wishing in any way to curtail the liberty of the speakers, and fully respecting such liberty, expresses the *desire that counsel would, in their arguments, avoid, as far as possible, useless repetitions.*) In the original report of the stenographers the Chevalier says, "*Je vais Messieurs me conformer immediate-* "*ment aux sages prescriptions de notre President, en me* "*bornant,* etc." (I proceed, gentlemen, to conform promptly to the wise direction of our President, by limiting myself, etc.) In this, which is doubtless the true report, he accepts the censure and applies it to himself with the humility of a school boy, case-hardened by numerous whippings, who is ordered to stand up for another, and at once promises reform. In the revised version the rebuke is not suppressed—that the printers would not probably agree to—but Mr. Descamps was allowed to edit his own reply and is made to say, "*Messieurs*

" les arbitres je ne prolongerai pas autant que je pourrais le " faire, le debat, etc." (Gentlemen, I will not prolong the debate as far as in my power.) What he meant to say here doubtless was, I will, as far as possible, avoid prolonging the debate; but writing probably hurriedly in the printing office he blunderingly put it as above.

We had fully and carefully considered the question of local representation by counsel selected at The Hague, and agreed that a practicing lawyer was indispensable. To such a one I could communicate suggestions or objections in technical language and with their full force. The maxims of jurisprudence, and the mode of reasoning on professional subjects would be familiar to him. Besides a professor addresses a class of students whom he is to instruct. His words are to be Gospel to them. The lawyer addresses superiors whose judgment he seeks to convince. There is all the difference in the world, as I pointed out to the Archbishop, and he agreed when we considered the employment of Professor Moore. Yet on going to Europe he proceeded to employ a college professor who had no forensic experience and had probably never addressed a court of law in his life. This I inferred from his want of technical knowledge, at the tone of his speech before I had learned the fact authentically. His absolute ignorance of the laws of evidence is shown on pp. 314 and 318 of the stenographic report. He had constructed a fantastic argument in favor of a recovery in gold, based on the exact meaning of the Spanish verb *entregar,* which he contended signified *" to deliver into the hands of,"* and thought it material to establish authoritatively the signification of the word *entregar. For that purpose he placed on the table of the court a couple of dictionaries, one Spanish and English and the other Spanish and French, which he called "official."* Any legal practitioner would have told him that that is not the way to prove the meaning of a foreign word; and as a teacher, he should have known better than to call any bilingual dictionary *official,* for there is probably no such thing in the world. To make a dictionary such would require the action of two or more Governments.

I will dismiss Mr. Descamps with some reference to passages and expressions in his speech which confirmed me in the opinion that he is not a lawyer, but a professor or a lecturer, one of the class of persons the Archbishop and myself in consultation had deliberately decided should *not* be employed. The excuse for taking such a sorry substitute as the Chevalier Descamps will appear further on.

"Let us examine, gentlemen, by the light of these observa-" tions the case before us to-day" p. 294. "Behold the answer " to what is termed an isolated opinion" p. 296. "To show " you, gentlemen, how the authors of the Roman law, of " which I have just spoken, looked at this question" p. 297. " So much, gentlemen, for what may be called the question " of law in general; let us come to the fact and see whether " the umpire's judgment does not, etc." p. 298. (Here he proceeds to read the judgment of Sir Edward Thornton, sentence by sentence, explaining it as he goes along, as he would to a class of *very dull students* in a school.) "See how clearly he " establishes the point of competence (jurisdiction) which " concerns him" p. 299. "Then look at what the umpire " says, I request your particular attention to this point" etc., p. 301. "I tell you, gentlemen, that this judgment, so short " and so simple, is truly remarkable, in view of the *delicate* " facts it presents" etc., pp. 301 and 302. "I would here put " you on your guard against" etc., p. 304. "Moreover, and I " call special attention to this point" p. 304. "It remains " for me to *instruct* you on another point" p. 307. "I ask " your undivided attention to the observation I am now *about* " *to make*" p. 308. And the observation itself, to which he thus invites "undivided attention," is that he was chatting ("*causant*") the other day about this question with one of his colleagues, whose name he is at liberty to give, but, on the whole, concludes not to, who said, etc., p. 308. "*Remarquez* " *bien que ce traité*," etc., p. 315. "*Remarquez bien*," "be " careful to observe," is particularly characteristic of the lecturer or pedagogue.

Whatever the motive for employing the Chevalier Descamps in the case, it plainly could not have been his competence or ability in forensic discussion. He wearied the judges, as shown by the rebuke of September 30th (p. 311), and even wearied himself, as he declared at the close of the session of the day before (p. 309).

He was an old acquaintance, and a schoolfellow, of the Archbishop, who gave, as I am informed, as the reason of choosing him, *Mr. Descamps' familiarity with the canon law!* The importance of this qualification will be seen, by comparing the number of citations of that law, in the proceedings, with those of the Gentoo code, and the laws of the ancient Egyptians. The Chevalier Descamps achieved during the argument of our case the unique distinction of being formally rebuked by the court for his garrulity, and requested to avoid as far as possible such useless repetitions.

Mr. Descamps did absolutely none of the labor of the case. He took no part in deliberation or the determination of any question of management that arose, in fact did absolutely nothing, except deliver that long-winded and empty extemporaneous speech, the publication of which he himself flinched from, and procured a mutilation of the *proces verbal* by the substitution of an after-written argument for the true record of his doings. Nothing but the fact that he appeared as counsel for the United States, which cannot condescend to chaffer with him about a thousand dollars, entitles him to any fee at all, for he was absolutely useless. The Archbishop may squander money on him and thus magnify his own importance among his old college mates at Louvain, but I object to his using my money for such ridiculous purpose.

I have thought it appropriate to make the foregoing observations on the amounts charged to Senator Stewart and myself for the services of the eleventh hour men who came in to take the part of supernumeraries in the theater, to crowd the stage at the close of the last act of the drama and demand the lion's share of the spoils and honors of victory from those who fourteen years before had enlisted for the war, and whose zeal and efforts have never flagged.

The questions on which we had differed were as follows:

I. It was claimed by the Archbishop that our participation in the money collected from Mexico should be limited to one-eighth each of what was already due and demandable on December 24, 1889, the date of our contract.

II. That fees were due to Messrs. McEnerney and Descamps, for services at The Hague, which should be paid by Mr. Stewart and myself, and that the determination of value of these services rested solely in the discretion, or, indeed in the caprice of the Archbishop, who at the same time admitted that he had no knowledge of the subject sufficient to qualify him to pass on the question, so that "he would have to consult two eminent attorneys," etc.

It was also assumed by the Archbishop that Mr. Stewart and myself could not be trusted to pay whatever sums we owed on this account, a most offensive assumption.

III. That we had no interest in the future annuity that Mexico had been condemned to pay, as the court had exceeded its authority when rendering that part of its decision.

I. The claim that we were only to share in twenty years' interest was based on the recital in the contract that "Mexico "owed about $800,000.00 for interest accumulated on the

"Pious Fund, etc., and that Messrs. Doyle and Stewart had "been retained to secure the payment thereof by legal pro- "ceedings, diplomatic action or other lawful means." The argument was, that our employment was by its terms limited to the collection of moneys then due, and that the recovery and collection in what we were to share was confined to the particular sum we were then and there retained to collect. If we went further and collected more money, such further collection was without our client's sanction and was outside the scope of our employment, and hence a voluntary act on our part for which we could not claim compensation.

I consider this plainly preposterous. This was not one of the cases in which a recital in a contract operates to restrict its scope. Our demand on Mexico was not for a stated sum due, but for arrears of an annuity still in vigor the amount due on which was steadily increasing with the eflux of time. Mexico had years before notified the United States that she considered the Pious Fund demand extinguished by the former award, and denied all further liability for it. We were retained to get for the Church, by any honest means, all we could on account of it, in money or property. It was, in Mexico's condition at that time, an almost desperate claim and in effect our agreement was a salvage contract, to be remunerated by a share of all that we recovered and collected; and only in the case of collection were we to recive anything. The absurdity of an employment to collect installments preceding 1889, and none accruing thereafter, although it was morally certain we would have, and our contract distinctly contemplated, a controversy probably outlasting the lives of the parties, during all which time our demand would be increased by $43,050.00 per annum, is apparent.

The fact that our claim as defined in the "memorial" to The Hague tribunal distinctly demanded judgment of thirty-three installments of $43,050.99 each, with the express authority of our client settles conclusively the sum for which we sued. To say that the court in awarding it, exceeded its jurisdiction is an absurdity.

We learn from Mr. McEnerney's statement to Mr. Kappler that it was long the intention of the Archbishop to claim this extraordinary construction, yet it was never suggested, or even hinted at, before the final award, and was, in fact, carefully concealed, until after the scheme to get the whole sum awarded into the Archbishop's hands, for distribution, failed. In this connection my telegraphic inquiry of May 12th, 1904,

as to how he understood the contract when he signed it, and the Archbishop's refusal to answer are significant; in fact morally conclusive.

I say nothing of the rules of interpretation laid down by our Civil Code (Division III, pt. Tit. 3) Sections 1635 to 1649 inclusive, though they are practically of universal acceptance and conclusive of this question.

My own conviction is that it was never in good faith believed by the Archbishop, but was put forward to be abandoned, on settlement, so as to give the appearance of a compromise of conflicting claims, to any concession extorted from Senator Stewart's necessities or my impatience. Hence I dismiss it as unworthy of serious consideration here. The authorities by which Mr. McEnerney said he could support it he has never shown, nor will he attempt to.

II. The amount of the fees paid, or payable to Messrs. Descamps and McEnerney.

This was a mere question of so many dollars, and should never have been permitted to disturb the harmony of the parties. So far as regards the latter it could have been settled by arbitration that need not have occupied half an hour, nor need much more time have been consumed by that of Mr. Descamps, once the facts were made known and they would have been so settled without doubt if they could have been treated on their merits alone; but there were other circumstances connected with the case not disclosed here nor discoverable from the papers, which I have no doubt controlled the result. Hence the Archbishop's shuffling conduct; after having agreed to submit the amount of Mr. McEnerney's fee to Judge Seawell, he refused to sign the necessary statement of facts (submission) alleging first, that it did not fully state the case (which he was expressly authorized to amend as he saw fit) and secondly because it stated matters that *he did not deem material*, though he did not deny their truth. Changes having been promptly made in the paper, by adding the words desired by him to complete it, he still refused to sign it, promising to prepare a shorter statement himself (which he never did) and thus broke up the agreed arbitration, though proposed by himself and to be made by a gentleman of his own nomination. I feel convinced that it was never in good faith intended to be perfected or signed, but was merely a device to amuse us with pretended negotiations until the money had been received by the clients when these new claims would be drawn on us.

As to Mr. Descamps' fee, the objection to it stood on even stronger grounds than McEnerney's. Before the Archbishop started for Europe, it had been distinctly agreed between him and me that a college professor was distinctly *not* the person whose aid we wanted at The Hague, and on that ground we had rejected a very eminent American publicist strongly recommended to us by the Secretary of State. The Archbishop went to Europe authorized to employ, not a professor, but a practicing lawyer to assist on the argument. He employed a mere college professor whose only recommendation was his supposed knowledge of the canon law! the doctrines, rules and practices of which were in no way involved in, or relevant to the case, and who, whatever may have been his knowledge of other subjects, had none whatever of the law applicable to the case he undertook to discuss. I have already said enough of the performance of Messrs. Descamps and McEnerney and shall only add here that I am myself persuaded that the Archbishop's reason for employing the latter was gratitude for past and hopes for future unrequited services, payment for which he now found the means of making, at our expense.

The Archbishop says that I emphatically refused to give him any opinion as to the compensation proper for Mr. Descamps and McEnerney, which is absolutely not true; he had, in his possession at the time, my opinion in writing (letter of January 31, 1903, p. 18), of the worthlessness of Descamps' services and as to those of Mr. McEnerney, I had only postponed (p. 36) setting a price on them until Mr. McEnerney should have expressed his own opinion by stating the amount of his charge, this deference was naturally due to him. As soon as he named his charge I promptly named my estimate of his services, and the Archbishop had it in his possession long before he wrote this statement. He professed frequently to be ever so anxious to see me for the purpose of making a settlement of the business and all disputed questions it involved, he made many appointments for the purpose running through several months, but *broke every one of them*. The only time that he did come was when he was sure he was not expected and would take me by surprise; and then he could not remain long enough to more than mention the subject of Mr. McEnerney's fee concerning which he showed a remarkable anxiety, wholly inconsistent in my judgment, with his position and his duty.

We might have disputed all liability for the fees of Messrs.

McEnerney and Descamps as not coming within the terms of our contract which distinctly provided that if *we* deemed it best to employ associate counsel, *we* might do so but at our own expense. We did not employ Mr. McEnerney but reluctantly consented that the clients might employ him; and as to Descamps, we were entire strangers to his employment. But the case was a great one, and we had obtained a striking success in it; and I felt and have no doubt that Mr. Stewart felt that there should be nothing about our settlement of the fees, but what was magnanimous and liberal. It was in that spirit that I invited discussion with the Archbishop "as between gentlemen and friends" and it is certain that the first intimation that he did not propose to treat the matter in that spirit was his distinct failure to respond in any way to that suggestion.

The right of Mr. Stewart and myself to be heard, as to the amount of fees to be paid them by us, is too plain for discussion.

The Archbishop's claim, of the right to determine the amount at his own caprice and without consulting us, is only another illustration of his entire unfitness for such duty. *In employing and paying for additional counsel in the case he was, in law, acting as our agent and spending our money;* his duty was to aid us and in doing so to use proper economy; the charge is that what he really did was to use the power which he claims was entrusted to him by us, for the *requital of old debts incurred by himself*. It was a gross abuse of his trust and another evidence of his utter unfitness for such a duty. Had our positions been reversed, such an act on my part would have been called in plain language, *dishonest*, nor could I complain of the term.

And in fine, as we were both willing to allow the Archbishop in settlement a reasonable charge—indeed, more than a reasonable one for both these parties—the question for our legal liability for such, really cuts no figure here. Whether legally responsible for it or not, it cannot be claimed that we were liable for an arbitrary or unreasonable demand, and my contention here was, and is, that the demand of five thousand dollars for Descamps' services and ten thousand for those of Mr. McEnerney, was in each case quite unreasonable and extravagant.

As to Mr. Descamps' fee, we now know what we did not then, that he and the Archbishop were college mates at Louvain; only two years elapsed between the graduation of the

two: the Archbishop was very desirous to have him made umpire and thus a member of the arbitral court that passed on the demand at The Hague; to that end he made every effort, but failing in that, he employed him to act as counsel, though he had no *status* as such; but on the contrary, belonged to a profession a member of which it was distinctly agreed *should not be employed,* and for excellent reasons. His argument, a phonetic report of which had been preserved and printed, proof sheets of which I have, was so ridiculous and absurd a production that its author, "with tears in his eyes and his voice," begged and obtained the intercession of one of the junior counsel in the case (Mr. Sherman Doyle) to be permitted by Mr. Ralston to withdraw it and substitute for it in the *proces verbal* another paper which only made its appearance after the decision of the case.

I have been told that the Archbishop made an agreement with Mr. Descamps to endeavor to have him made a member of the court, or failing in that, to retain him as counsel in the case at a fee equal to that paid its members. I attached no importance to the story at the time, having then unlimited confidence in his (the Archbishop's) probity of character, and cannot now recall who informed me. I therefore make no such charge, although there are circumstances, such as the Archbishop's recommendation of his old college mate for the post of Umpire, and Mr. Descamps' urgency for a larger fee for the members of the court than was allowed, which point strongly that way. There was certainly some private understanding or free-masonry between the Archbishop and Messrs. Descamps and McEnerney, the knowledge of which was studiously withheld from me. They had private conferences, from which Mr. Sherman Doyle was excluded, and they made an earnest effort to have the reply in the case confided to Mr. Descamps, which Mr. Ralston had most properly assigned to Judge Penfield, as the chief law officer of the Department of State; and only his, Ralston's, firmness in insisting on his right in this particular saved us from the calamity of an assignment to Mr. Descamps to the duty of replying, to an argument which I believe he had not even heard—what a folly and absurdity to call on Mr. Descamps to reply to an argument delivered while he was absent from the court, and of an ecclesiastic wholly inexperienced in affairs of the kind, and demoralized by fear, to undertake to determine on the management of the case in preference to eminent counsel clothed with official authority, accustomed to such responsibilities and

hardened to them by thousands of forensic contests of importance!

III. As to the third point of difference between us, viz., the right of counsel to participate in the sums collected from Mexico for installments of interest accruing after the making of the award, our claim was, and is, clearly covered by the words of the contract, which provides "of all that shall be "collected and received as full or partial payment, or in "compromise of the claim, each of the said attorneys is to "receive one-eighth part as compensation for his services "and any disbursements he may make in or about the busi-"ness." This is so plain that it is not remarkable that the Archbishop, having made up his mind to evade its payment if possible, instructed or allowed his counsel to decline to discuss it in any way. He had nothing to say, and there was nothing to be said in support of his claim. In law it was absolutely indefensible. But it is also true that no such extraordinary judgment was anticipated by either party as that pronounced by the court, and having abandoned the claim on settlement, any present discussion of its merits would be only academic and out of place in a paper already too long. All such is therefore omitted.

Throughout this paper I have endeavored to speak of the Archbishop without any expression of the indignation which his artful and disengenuous conduct inspires. If he were a layman, I should probably use some terms expressive of the sentiments of contempt which falsehood and hypocrisy inspire; but I withhold such, because of his office and calling. We are taught that the Bishops of the Church are the successors of the Apostles. If called upon to point out the one to whom he succeeded, I know of but one whose conduct was such as to warrant the supposition that he was the person.

The reader will form his own judgment, as to the earnestness of the Archbishop's desire for a settlement of the matter, and of his professions of co-operation to that end. To me it seems that his constant effort was to postpone, to create delay, and as the time was approaching and close at hand when the whole award would be paid to himself, unless our portions were agreed upon and communicated to the Secretary, I conclude that such was the end he aimed at, especially as he never hinted at, or allowed us to suppose that he claimed for the contracts the extraordinary construction assumed for them in Mr. McEnerney's letter to me of September 24th and his to me of September 30, 1903, when after much prevarication and evasion he declared such to be his

position (pp. 58, 59). Many circumstances confirm this conviction, but the above are sufficient.

JOHN T. DOYLE.

MENLO PARK, CAL., February 12, 1906.

MENLO PARK, CAL., Feb. 12, 1906.

Most Reverend Archbishop:

I am sending you with this a copy of the material parts of our correspondence between the date of your return from The Hague in December, 1902, and my acceptance of your ultimatum, transmitted to me from Washington through Senator Stewart in June, 1904, and accompany the same with some observations suggested by the facts, as they occurred.

I am over eighty-six years of age and am admonished that my remaining time in this world must be but brief. I have seven children to whom my reputation, good or bad, will descend. Yours is the property of a large Catholic community, who, in this respect, stand in the place of children to you, and who are, therefore, as much interested in your good or bad name as my children are in mine. Neither of us can afford to live or die under the imputation of *deliberate dishonesty*.

Now, in the Pious Fund case, *either* I attempted dishonestly to overcharge you a large sum of money, *or* you extorted from me my consent to your retaining a corresponding sum to which I was justly entitled. I see no room for a third alternative, nor, I believe, do you; otherwise you would have kept one of the many appointments you made with me to discuss it, and eliminate any error under which either of us might be laboring. You knew all the letters and papers relating to the matter were here, and here alone could any intelligent discussion take place about it. But, although so desirous "to have the whole matter cleared up as speedily as possible," and although "our relations for well nigh twenty years had been such that no money could compensate either of us for changing them"; although we had direct communication by telephone between your house and mine, and the Seminary, where you have your own suite of apartments, is within a short distance of my gate, you could find no time between your return from Europe in December, 1902, and the following July, nor indeed down to the time you forced the settlement on me in the summer of 1904, when you could make and keep an appointment for its friendly consideration here. Although prior to your going to Europe you had been in the habit of coming here as often

as about once a week, after your return *you shunned me steadily,* and so far as I can see, only because you were ashamed to pretend to me that you understood our contract of December 24, 1889, in the sense that Mr. McEnerney, acting for you, put on it in his letter to the Secretary of State, of September 24, 1903 (p. 59).

It is said that any stick is good enough to beat a dog with, and you seem to think any excuse good enough for breaking an appointment made by an Archbishop, who does not wish to keep it. You had a cold; and again Mr. Cudahy of Chicago had come to Los Angeles to spend a few weeks and you had to repair to that city at once to wait on him; at another time you did not feel very well (your health was a fertile source of excuse), and fortune came to your aid after all other excuses were exhausted; your brother (a chronic invalid) became ill, and you had to go to Chicago *and spend a month there "to see what could be done for him."* And so you trifled away the months down to the time when the payment by Mexico was due, all the time concealing from Mr. Stewart and myself that you intended to claim that we were not entitled to share in any portion of the perpetual annuity recovered, which matured after the execution of our contract, viz., December, 1889. Mr. Stewart wanted much to receive his money from the Pious Fund case as soon as possible, and to avoid the delay and expense of sending it from Washington to California, dividing it and returning there his portion (which was distinctly expressed in the contract as "*one-eighth part of all that shall be col-*
"*lected and received, whether in money or valuables, and*
"*whether received in full or partial payment, or in com-*
"*promise of the claim*") having it paid to him by the Secretary direct. You claimed to be allowed certain offsets, amounting to $17,000, chargeable half to each of us, composed of:

McEnerney's fee	$10,000
Descamps' charge	5,000
Traveling expenses, stenographer, typewriter, etc.	2,000
In all	$17,000

Half of which is $8,500.

I considered McEnerney's proposed fee and Descamps' demand both highly excessive, and objected to them; but Mr. Stewart, being in urgent need of money, allowed his half of them without a word, and so informed Mr. McEnerney

and yourself, requesting that for his eighth of the amount collected from Mexico, less $8,500, you would ask the Secretary for a separate warrant, to save time and exchange (pp. 43-4). To this request you replied, through your secretary, Mr. Mulligan, that you would be "*pleased to afford him any convenience in the matter of making payment of his fee, and would make the payment according to his directions.*" Not a word as to any difference as to its amount, or as to any further claims against it.

"*Your Grace*" was most gracious and kind. Mr. Stewart replied by telegram on June 22d, mentioning that he had notified Mr. McEnerney of his assent to his demand, and requesting an order on the Secretary for his fee, in the words of the contract (repeating them) less eighty-five hundred dollars, adding, "we regard this as a final settlement of our half of the twenty-five per centum." This elicited your disingenuous reply by letter of July 14th (p. 44) that without consulting "the other beneficiaries of the Pious Fund you could not on your own responsibility give an order for the retaining of twelve and one-half per cent for your fee." And adding, "Besides it is impossible at this moment to determine the exact amount of your compensation. There are certain expenses to be met out of the general fund before the payment of attorney's fees, and until the expenses are precisely determined it will be impossible to fix the exact amount which will be payable to you. This determination shall be arrived at as soon as possible, and very probably before the government is ready to turn over to us the award. Needless to say, I am desirous that the whole matter be closed up as speedily as possible." Mr. Stewart, surprised to learn of a difficulty of this peculiar kind, which required you to know the result of the calculation before you could state the basis on which it was made, sent, on July 20th, his telegram of that date, stating his difficulty and asking, "Is it not twelve and one-half per cent, less eight-five hundred dollars, upon the amount award after reimbursing Government, and cost of shipment to mint? Your letter seems to suggest new difficulties as to compensation. Please inform me exactly of your position."

The inquiry here is very plain and put sharply. "Is it (my "fee) not twelve and one-half per cent of the award after de-"ducting eighty-five hundred dollars besides the Govern-"ment expenses and the cost of transportation to the mint?" A frank answer, an honest answer to this would have re-

quired you to reply either *yes* or *no*, and, if the latter, wherein it differed from the exact truth, as you claimed it to be. But your object was not to inform your correspondent but to mystify and confuse him, and by delay to get the money into your hands to set him at cross purposes with me, by imputing the blame some way to me; and so, you direct your secretary to say that two weeks ago he submitted the statement of expenditures in the Pious Fund case to Mr. Doyle, but for some unaccountable reason no reply had been received from him, this reply was wholly from the purpose. The statement of expenses incurred by the State Department and his transmitting them to me had nothing to do with Mr. Stewart's inquiry, and the fact that I had not made any reply to his letter inclosing it was merely for purpose of starting a new controversy. It was a red herring, drawn across the scent, and as to the statement that he was then writing to me to settle this matter as quickly as possible was wholly destitute of truth. What he was then writing to me was as follows:

"July 21st, 1903.

"*Mr. John T. Doyle,*

"DEAR SIR: Some days ago the Archbishop sent you a "statement of expenses in the Pious Fund as received from "the State Department. *Will you please return it to this "office if you have made a copy of it?*"

What is the meaning of this clear evasion of Mr. Stewart's question, and the false statement of his own action made by your secretary and by your order?

To comply frankly with Mr. Stewart's request, you would have had to tell him that you only proposed to pay him one-eighth of the twenty installments of interest that were due, when his contract was signed in 1889, and withhold the thirteen accrued subsequently, though all had been actually awarded and collected. This, of course, would have revealed to him the new construction of the contract of 1889, invented since you went to Europe with McEnerney. You undoubtedly knew well that neither Mr. Stewart nor I so understood the contract, or would acquiesce in such a construction of it, and that if we learned of the claim, before the money was paid over, we would probably impound it in the Secretary's hands. My explanation is that you wanted to have it in your own, and for this purpose, to postpone the disclosure of your new construction of the contract and involve that question in some mystification and difficulty. When Mr. Stewart received the last letter from your secretary, he telegraphed me, inquiring

what items of the secretary's account you claimed should be paid by us, and I was compelled to reply that I had asked you for them, but got no answer. It became then so apparent that you were trifling with us, that your whole scheme was, by fair means or foul, to get the money into your possession, and make what arbitrary deductions from it you saw fit, before dividing it, that Mr. Stewart not having the fear of the anger of celestial or ecclesiastical minds before him, sent you the "want of frankness" telegram. *After several days' consideration of this,* you concluded that it was offensive, and probably, for want of a better excuse, you seized on this one, to forbid any more communication from Mr. Stewart to you, direct, until he should apologize, and referred him to Mr. McEnerney. I think that "want of frankness" will generally be deemed, by honest people, an extremely mild term to be applied to those proceedings of your Most Reverend self, and reverend secretary. It, however, gave you the opportunity to fall back on your official dignity, and the good character presumed in favor of one holding your position. You say that you had never before, in a business career of nearly forty years, been accused of a want of "frankness." In that case, either your conduct has changed materially since coming to California, or what is even less probable, you had not been found out before. In any case there has been a wrong done, and it is material to the good name and reputation of each of us, that the truth should be known, or accessible to our friends that they may have the means of knowing which of us is to blame, for a scandalous state of facts, and to what extent. As all our discussion of the subject and intercourse about it was by letter, this will appear from an examination of our correspondence, made when I supposed that our difference was to be decided by the Secretary of State, who, by law, had a right to determine it. Hence, matters known to him are, in it, assumed to be known to the reader. He, however, was unwilling to take that duty upon himself (presumably because of your objection to his doing so), and notified us that he would refer it to the Court of Claims. This he also had a right to do, either by or against the consent of the parties, with this difference in the result, viz.: that in the one case, the decision of the Court would be authoritative and binding on the parties, while in the other it would be only advisory to the Secretary, who would himself decide. All others interested, consented to this reference, but you found a way to neither agree nor disagree, to the proposal, but expressed the opinion

that the Court of Claims should by no means be consulted about it, and begged delay till the middle of the following month of May, by which time you would come to Washington, and lay before him your reasons for this opinion.

The Secretary, I learn, wrote you in reply, that he would grant the delay till May 15th, which you requested, but that there must be no further procrastination, and that at the time named, you must produce your reasons. In pursuance of this peremptory demand you went to Washington, accompanied by Mr. McEnerney, contriving, however, that he, although your companion on the journey, should arrive a few hours before you. You had no valid, not even plausible, reason to assign against the reference to the Court of Claims (for its opinion would not have bound you without your consent), but you knew that Mr. Stewart's need of money was urgent; an enterprise in which he had invested large sums had proved unsuccessful financially, and he was called on for heavy payments. His daughter, too, had been unfortunate in business, and her property was in the hands of the sheriff, and advertised for sale by him; all this was in the newspapers, of which you were a diligent reader, and you wanted delay to increase the pressure on him to compromise. A meeting was brought about in Washington by your attorney (at which you did not appear), whereat, through the action of Bishop Conaty, Mr. Hamilton and Mr. McEnerney, you concluded a settlement with Mr. Stewart for his fee, and having, through the discovery of a technical defect in his contract (by the decision in Senator Burton's case), not before known, and his urgent and immediate need of money, jewed him down to the lowest sum he would accept, settled with him on that basis, and then *in deliberate violation of your promise to the Secretary* (a promise made to him, in form, but in effect to Mr. Stewart and myself, and acted on by us), left Washington for some place unknown and undivulged to us, without any pretense of keeping the engagement to meet the Secretary, on which you had obtained delay, merely letting Mr. Stewart know that I could have the same terms as had been accepted by him, if I wished. No reason was given why, from the discussion of the general settlement of lawyers' fees, I, whose interest was as large as all the others put together, should be excluded. But you did not want me, or any one representing me, present, and I was excluded. Mr. Stewart's claim being then eliminated, I was left to choose between accepting this offer, and taking what remedy the law would offer me to get

the money due me on the written contract of yourself and the Bishop of Monterey.

When this was made known to me I telegraphed immediately to know if you would give your personal assurance that, when signing the contract of December 24th, 1889, you understood it as stated and claimed in Mr. McEnerney's letter of September 24th to the Secretary, and received the answer that you "*would not give your personal assurance of anything.*"

I waited a day or two to consider the matter dispassionately, and then accepted the settlement you offered, just as I would the terms of a highwayman, not because I considered them just—I knew the contrary—but because of my advanced age, and that I was informed that it would take five years to get a decision of our difference from the Court of Claims. It was impossible for me to go to Washington, and I would have to leave the management of the case to some one there, and would, in all probability, have quit the world, leaving the whole affair as an inheritance to my family. You, no doubt, took all these reasons into consideration when making me the offer.

You did this! *You, the Archbishop of San Francisco,* representing the Roman Catholic Church; you, who for so many months professed to be so anxious to see me on this very subject, but were always unable to do so, because of some frivolous excuse offered from time to time. I might say with the psalmist: "It is not an open enemy that hath done me " this dishonor; for then I could have borne it; neither was " it my adversary that did magnify himself against me; for " then, peradventure, I would have hid myself from him; " but it was even thou, my guide, and mine own familiar " friend."

It would be interesting to know whether, on reviewing all this transaction, you still feel warranted in demanding from Mr. Stewart an apology for attributing to you a want of frankness. You had, in your own mind, before you left Europe, determined to allow us our share of only twenty of the thirty-three installments of interest allowed and collected. This we know, because you had canvassed the question with Mr. McEnerney while abroad, and secured his support in it, as he admitted to Mr. Kappler. You doubtless communicated it to Bishop Montgomery by letter, for he made it known to Mr. Macdonald, who mentioned it to me as early as November 1st, 1902. You had never given the slightest indication of it to Mr. Stewart, the Secretary, or myself.

This is admitted in writing by yourself (telegram of August 11th, 1903), when you say that, upon receiving certain papers, *you will make* a statement of your position, and the statement was made by Mr. McEnerney for you September 24th, 1903. You were therefore endeavoring to make a settlement of a difference of about a quarter of a million dollars, claimed and, by the terms of the contract, clearly due the other party, while concealing the fact that you intended, after you had got the money into your hands, to set up a claim to it yourself, which would have left to them no remedy except a suit at law against their clients in a San Francisco court. This was the way you proposed to serve me, who had given you twelve years of continuous, untiring service, and with whom you had been for well nigh twenty years on such terms that "*no money could compensate either of us for changing them.*" Do you seriously call this frankness on your part? If you do, I fear you will be alone in such opinion. As to the profit of the act, you gained some nine thousand dollars of over-charges, paid to Messrs. McEnerney and Descamps, and ten thousand dollars (Mexican) per annum, as long as Mexico continues to pay that award of future interest; a very successful coup, Archbishop, but very dishonorably achieved.

Archbishop, you cannot pass for such a simpleton as this. You were no doubt ashamed to meet people whom you had treated so scurvily, and after five days of deliberation took advantage of Mr. Stewart's expression of "want of frankness" to take huff and forbid him to speak to you. What was nominally the precise point of my own offense, I do not know, but the real point of it was, without doubt, that I was supposed to share Mr. Stewart's opinion on the question of frankness, and that I had presumed to differ from you on the question of money, and to revoke any authority I had ever given you. I knew when I wrote my letter of May 18th, revoking all power you had from me, that I was committing an unpardonable offense. The clergy exhort us to forgive those who injure us; but one who commits an offense against their dignity is never forgiven. The wrong done me pecuniarily, and your gain from it, I shall not undertake to measure accurately; whether you should feel compensated or not, you, who forced the transaction on me, can best answer: I presume you do, for that it gratifies you to have money in your possession, even if you do not own or use it, is evinced by many facts, notably by your proceedings to have distributed to yourself the legacy of one hundred thousand dol-

lars bequeathed by Mrs. Donahue to St. Ignatius College to found a Catholic library in San Francisco, and which that institution declined, and you asked for and received the money in its place; your total failure to fulfill the duties which you thus assumed, although (nearly five) years have elapsed since you received the cash, and a generation of young men, who were intended to be benefited by it has grown up from the age of sixteen to twenty years, deprived of the instruction that that money would have purchased for them. It was paid to you February 25, 1901.

You once proposed to leave the reasonableness of the amount to be allowed Mr. McEnerney in the Pious Fund case, to Judge Seawell. I agreed to this, and wrote out a submission of the question to him; you made difficulties, however, about the form of this submission and refused it; I added what you deemed needful, and you rejected it again, although I allowed you to alter it to suit yourself. You proposed to prepare a shorter statement of your own, but you never did. Is it not pretty plain that you were maneuvering for time to get possession of the money, before any determination as to the ownership of any portion of it? And that was doubtless the object of your efforts for delay.

Even the aid of your porter was called in for that purpose by withholding from you my letter and the accompanying papers concerning the matter, from Saturday afternoon to Monday morning; now said to have been done because he, the porter, did not deem them of any importance. Is not this excuse rather thin, Archbishop? Do you seriously expect any intelligent person reading it to believe that a person in your responsible position would permit one exercising the humble functions of a porter, to deliver or withhold at his discretion a large sealed letter, brought by a special messenger, or bearing a special delivery stamp, because he, the porter, did not deem it of importance? If he gave that reason for his conduct, it must have been because he was instructed to do so by someone in authority. There are, as you are well aware, statements, literally true, but designedly as misleading as falsehoods. He supposed whatever he did suppose, because he was told to do so. The thirty-six hours between Saturday evening and Monday morning might, as the affair then stood, just cover the interval between success and failure, in your scheme to get our money into your hands, while we were kept parleying about unimportant details. The person who sent you that letter evidently wanted it delivered promptly, hence

sent it by a special messenger; he wanted haste; you were maneuvering for delay, and your porter's omission to deliver it, where its size and mode of transmission afforded a presumption of importance, gave you, at a critical moment, an extension of time from Saturday afternoon until Monday morning. This we are asked to believe, or rather to assume, for it is not actually asserted, resulted from the unauthorized act of your porter. There was a time when I might have accepted this on your suggestion; but I have learned from yourself to be more guarded in my assumptions; your explanation of his omission to deliver it being only conjectural, I feel quite at liberty to hazard my own conjecture also; and mine is that the porter omitted to deliver that letter because he had an intimation from someone higher than himself in rank, that it would be quite satisfactory to you to have its delivery delayed for a couple of days. Your own carelessness of statement favors this suggestion; you will recall your letter of February 4, 1903, wherein you first assert that you acted under the advice of Senator Stewart, and then perceiving that you had exposed yourself to a flat contradiction, you retract the statement, saying, or rather to put it more accurately, I told him what I had done, and he made no objection to it. How fortunate you are to be able to assert that for nearly forty years of public life you had never before been accused of a want of frankness! It scarce appears credible; people may have abstained from telling *you* their opinion of it, but it cannot have gone unobserved. You more than once declared yourself incompetent to determine the amount of Mr. McEnerney's fee, yet to the end insisted on exercising that power. Once, when making this declaration, you said that you would have to consult two eminent attorneys on the subject, etc., yet we were not permitted to discuss it with Mr. McEnerney himself, nor with you, nor even to know the names of the eminent lawyers consulted about it; I do not myself believe you consulted any such; I have never heard of your doing anything of the kind. Neither do I believe that any respectable lawyer would have undertaken to pass on such a question without hearing both sides. Will you give us the names of those eminent gentlemen, Most Reverend Archbishop, even at this late day? Dare you do so? Can you? The letters prove that you consulted Mr. McEnerney, but whom else? McEnerney had gone abroad, employed, and to be paid by Mr. Stewart and myself. I had protested against his employment and told you that every paper in the case was in French, Spanish, Italian or German, and for want of know-

ing any language but English, he could be of no possible use before the court. You replied that you did not want him to make an argument, but to aid you in the selection of local counsel and possibly of an umpire, and I consented to accept him, to gratify you, and partly, I admit, out of good will to him. Your explanation of what had passed between you and me must have been very imperfect, else surely he never would have consented to accept employment in a case wherein he was not at liberty to arrange the amount of his fee, or to discuss the subject with his chief, who was expected to pay it. What he did, or attempted, towards aiding you in the choice of counsel or of an umpire, neither you nor he has ever told, though I have heard that you personally attempted to speak to one of the arbitrators on the latter subject, and got promptly rebuffed for your pains. An umpire was, however, appointed, and Mr. McEnerney made a speech (wherein he commenced by a gross historical blunder occasioned by his carelessness and ignorance of the documents) and exhausted thirty-nine octavo pages of print before touching the principal question submitted in the protocol. This (the real turning point in the case) he magnificently left unconsidered "because the law Agent of the United States had given it such careful, diligent and learned investigation." (Vol. 2, p. 81).

I think that nobody on reading the letters over and knowing the history of your proceedings in the case, can fail to recognize that your scheme from the beginning was to get all the money into your own hands and then for the first time announce the construction that you proposed to put on our contract, and force us to assent to a division in conformity with your wishes, by withholding our money; whether this course was consistent with the frankness called for in the conduct of an Archbishop, or a gentleman, I think few will agree with you. I have known several Bishops and two or three Archbishops in my long life; Bishop Fenwick, Bishop Amat, Bishop Mora, Archbishop Eccleston, Archbishop Hughes, Archbishop Cardinal McCloskey, and Archbishop Alemany. I do not believe that any one of them would have sanctioned such conduct as yours in this case by his example or approval. I have known also eminent ecclesiastics of the Episcopal church, none of whom I am convinced would have done so. I do not believe Bishop Nichols would approve such action, and I am sure Bishop Kipp would not have done so, for he was a man of punctilious integrity and honor. It is known that so far from keeping a trust legacy of a hundred

thousand dollars for nearly five years awaiting employment, and earning interest, he sold his property and impoverished himself in his extreme old age, to pay debts imprudently contracted by a member of his family, which he was not liable for and was otherwise unable to pay. You might reconsider these questions in connection with your trusted counsel, Mr. McEnerney, and see whether you feel still of the same opinion about them.

In connection with this affair, I call your attention to an interview with His Eminence, Cardinal Gibbons, published on July 28th, wherein he expresses himself in strong terms on the subject of corruption in high places as due to the love of money, and suggests the *remedy for it by exposure.* All the truths His Eminence utters apply equally to ecclesiastics and laymen, with this addition, that the higher the position of the transgressor, the greater is the offense. A poor fellow brought up in ignorance, like some of our departed millionaires who began life with pick and shovel, and really knowing no better thing in the world than money, cannot be held responsible to the same extent as one who has received a classical university education, and been instructed in moral theology as well as in the principles of social morality, recognized by men of the world who live honorably and justly and who propose to continue to do so without regard to the requirements to the civil law. If the Church does not expect her clergy to live up to this standard I am entirely misinformed and I fear you will find none to recognize in your treatment of me in this business, conformity to such a standard. I suppose the Archbishop of Baltimore has no actual jurisdiction over you, but he is, I believe, your superior in the Hierarchy, and your senior by seventeen years or so in age as well as in the Episcopate, and enjoys the respect of a large community. His opinion carries great weight. You might profit by considering this in connection with your treatment of me in this Pious Fund case, and the amount you have gained by it. The "auri sacra fames" greed for money was pronounced accursed in its influence on human conduct by a great Roman poet as early as the time of Augustus.

Besides this cursed greed for money, a grievous fault in your character is your total want of gratitude for favors received, or service rendered; I mean, of course, for such as are past; as to gratitude for favors to come, you have, I believe, sufficient to supply a Tammany politician. I abstain from pointing to your treatment of me as illustrative of this trait, although I might well do so, having recovered for the

Church the Mission Churches and buildings, orchards, gardens, etc., after your predecessor had been advised by eminent counsel that he had no legal right to them and nothing less than a special Act of Congress could secure them for him; I determined the grounds of the claim on which the Pious Fund was recovered, presented it to the Commission of 1868, taking the responsibility in that case, in the absence of my clients, of abandoning the claim they had advanced for it, and retained Mr. Casserly and myself to support, and resting our demand on entirely different, and in fact, opposite grounds; they had always regarded the taking of the Pious Fund by Mexico, in 1842, as a tort; I could see no way to success on that ground, under the convention of 1868, and decided to treat the transaction as a sale of the property, and to count *in assumpsit* for the interest promised by Mexico, as for the price. In taking this course I took the responsibility and incurred the risk of abandoning, without authority, the rights claimed by my clients; but I had confidence in their good sense and knew that they had the same in my loyalty and discretion, and on the ground on which I based our claim we won and recovered and collected twenty-one years' interest on the value of the property at 6 per cent (being more than the principal), leaving the latter still unpaid and continuing to draw interest. I thought that for my courage, decision and success there, I might fairly claim some consideration from the clients who were thus saved $904,000 cash in gold, besides saving the principal bearing interest, amounting to $717,515. I thought, and still think, I might claim to have "plucked up drowning honor by the locks." For this, when I asked from you an act of the merest justice, namely, that you should consent to my being paid at once the amount you admitted to be due me, under any circumstances, leaving the sum in dispute between us to be settled afterwards, *you refused.*

Perhaps some blind partisan of yours may suggest that you may not have known that I needed the money, but that excuse will not serve; it is and was notorious that I have never been in circumstances to claim that present possession of a sum of over $20,000 of my own money was a matter of no consequence to me; you knew better and detained my money for the purpose of squeezing me. When the Secretary returned and learned the way we were being treated, he promptly ordered us paid this undisputed sum, and you had the satisfaction of having done a very mean, dirty and disgraceful act and gained nothing by it. Shame! Shame!

When in my letter of October 8th (p. 59-60) I suggested

that I was entitled to some consideration because the Church was really indebted to me for all she had recovered, or ever would recover on account of the Pious Fund, you answered that for all I had done I had been generously paid. This is a good deal like the case of a fellow whose life or limb had been saved in an emergency by the presence of mind and decision of a physician or surgeon, to whom he pays the customary fee for a visit, and who afterwards, when asked to do the physician a favor that would cost him nothing except the merest civility, replies: "For what you did for me I paid you in full; and as to your claim of gratitude, I do not recognize it." I told you in my letter of October 6th that I was out of pocket several hundred dollars and in debt besides, in the case; that the receipt of the money would be a great convenience to me because, wanting it and unwilling to borrow, I must otherwise sell property. I had to sell accordingly.

I direct your attention, and that of the reader especially, to your letter of June 19, 1903 (p. 40). We had at that time, as appeared by your correspondence and as I believe, reached an agreement to leave the items in dispute between us, to the arbitration of Judge Seawell, and that the rest of the undisputed eighth should be paid over to each at once. I wrote out a brief memorandum of this understanding, which I signed, and will append a copy of it to speak for itself. This I sent to the city by my son, with directions to have another copy made there for your signature, which, when given, he was to exchange with you. Down to this time you had never let me know that Mr. McEnerney was advising you, and I supposed, as probably you intended I should, that you were acting under the advice of some other person, as my letters show. He went to the city, and having learned from the Judge the time limit desired for his decision, carried the letter and paper to you. You would not read them nor even break the seal. He, however, told you the contents and offered to call for an answer any time you named, but you preferred to send it to me by mail, which would of course delay action for another day or more. I was by this time so convinced that delay was your object that I wrote Mr. Stewart prophesying that you would take that course, and for that purpose (p. 49). You declined to sign the agreement to arbitrate, giving a variety of unsatisfactory reasons, the prime one being that McEnerney (who had never been proposed as a party to the arbitration) objected to it, and you even affected not to understand why it contained a clause that you should pay over the

undisputed part of the fee at once, and demanded an explanation of this inevitable portion of such an agreement on the subject. I am almost ashamed to confess that I was imposed on by this affected stupidity on your part; but I had been for so many years accustomed to believe in your candor and good faith, that it did not occur to me to suspect you of deceit. Hence I wrote you at once (June 20th and 22nd) explaining all that you affected not to understand, which probably afforded yourself and McEnerney a hearty laugh at my expense. I consider that this passage in the negotiation with your affected stupidity affords the clearest evidence of duplicity on your part, and that delay was your real object. The purpose of the delay could be no other than I have mentioned above, namely, to get the money into your own hands, and then set up new claims against it. You professed a desire to settle our difference, but always by the arbitration of a person to be selected by yourself, but when I assented to that and drew out the submission to Judge Seawell of the amount of McEnerney's demand, you backed out of your own proposal, and announced that the better way would be for you to pay him what you thought right and if I did not approve of the amount, to let me sue for my demand.

But I dismiss any proof derived from my personal experience and ask anyone who doubts my charge that you were extremely ungrateful to look at your treatment of Mr. Secretary Hay. It was vile and ignoble to the last degree. His attention having been directed to our demand against Mexico and like cases accumulated in the State Department, his first expression about them was given in his letter to Senator Morgan, of Alabama, dated May 23, 1900, and by him submitted to the Senate on the 24th of the same month, as follows: (From the *Congressional Record* of May, 1900, p 6400, extract.)

"Mr. Morgan: I present an official letter from the Secretary of State, in regard to the claims against the Government of Nicaragua and other governments which is so highly creditable to the Administration and to the Secretary, and so important to claimants, that I ask that it may be read."

"The President pro tempore: "Without objection, the letter will be read."

The letter was read and ordered to lie on the table. It is as follows:

"Department of State, Washington,
"May 23rd, 1900.

"Sir:—I have the honor to acknowledge the receipt of your

" letter of December 14th, last, inclosing one to you from Dr. " Earl Flint, of Rivas, Nicaragua, requesting information as " to the status of the claims of American citizens against " Nicaragua.

"You call attention to the antiquity of some of these claims " and the injustice done the claimants by the long delay in " their settlement, and you express the hope that Nicaragua " will be held to just account to our people in the matter. " The subject of bringing to a final settlement claims against " Nicaragua, some of which have remained unsettled for a " period of over forty years, is one that has received the " careful consideration of the Department, even before the " receipt of your letter. Not only these, but other claims of " a meritorious character against other governments have " received similar considerations; for example, the old Span- " ish and Cuban claims, claims against Columbia, and still " others.

"The Department has given prompt attention to all current " claims and business, and as far as possible, it has taken " up and adjusted other claims of long standing. More would " have been accomplished in this respect had it not been for " the multiplicity of novel and difficult questions arising dur- " ing the last three years; *as soon as it is possible to do so it* " *is the purpose of the Department to bring to settlement in* " *some form every meritorious claim of an American citizen* " *against a foreign government, even though it may be one* " *of long standing.*

"I have the honor to be, etc.,

"JOHN HAY.

" HON. JOHN T. MORGAN,
"U. S. Senate."

A copy of this number of the record was sent me by a friend, and I acted on it promptly by immediately recalling attention to the Pious Fund case. Secretary Hay took up the case without delay, and having satisfied himself of the justice of our claim, at once proposed arbitration to Mexico, this proposition and a letter of Mr. Hay's directly afterward made it clear that the Department was in earnest in pressing it, and Mr. Mariscal could really offer no serious objection to the proposal; as a clause in the treaty, Guadalupe Hidalgo agrees to submit to arbitrators future differences if such arose, he of course assented. Mr. Hay then suggested the credit to redound to the two great American Republics for being the first to make use of the Arbitral Court provided for by The Hague convention and to this Mexico assented,

and the protocol to submit our case was drawn up. On the morning appointed for the meeting of the Secretary of State and Don Manuel Aspiros, on the part of Mexico to settle its form, and sign it, an account appeared in the daily paper of an incident illustrating the desirableness of having no partisans of either side on the Arbitral Court, and Don Manuel Aspiros readily assented to Mr. Hay's suggestion that Mexicans and Americans should both be excluded from membership. This secured us an impartial tribunal and warranted my confidence as stated to you when, not long thereafter, you were in despair at our prospects and in a funk over the case, when placing my hand on your shoulder and looking you squarely in the eye, I told you: "*Archbishop, you cannot lose this case; it stands on the strongest grounds known to the law; our right is res judicata,* already, and no tribunal such as that we are going before can possibly ignore the doctrine without deciding its own judgments to be worthless." I believe my confidence reassured you somewhat. You practically forced Mr. McEnerney on me as an associate, telling me all the time that his charge would not be large, and I accepted him to gratify you; not from any service I expected from him; I presume he had told you that he could not come into the case without my consent. But having given this out of regard to you, I proceeded to make his position as agreeable as possible to him and wrote inviting him, from you, to join us. When you had fixed on the day for your starting for Europe it left you for the journey to New York several days more than necessary and I spoke to you very earnestly desiring you to take in Washington on your way in order to call on Mr. Hay and personally thank him for all he had done for us, you said you could not do it, as you had some *family business* to attend to which would not leave you time. I urged you and pointed out to you that there was time sufficient for both purposes, but you had I know not what objection to the proposal. I afterwards (July 29th) wrote Mr. McEnerney, begging him to urge the same advice on you. You would not agree to do anything of the kind and I believe you have never to this day called or even sent a card of acknowledgment to Mr. Hay for his zealous and most efficient action in the whole case.

When the submission to The Hague tribunal was agreed on, the aid of four distinguished European publicists was called in, it became evident that a large bill of expense was to be anticipated; several thousand dollars cash would certainly be needed; who was to provide the money? Mr. Stewart was

known to be in financial difficulties. I know not what you or myself could have done. We had, however, no trouble. Mr. Hay was equal to the occasion; he requested the Senate committee, having the appropriation bill in charge, to include in it an appropriation of fifty thousand dollars, as an advance to cover the anticipated expenses of the arbitration, and at his request laid the demand before them officially, through Judge Penfield, his representative, procured the appropriation, by the United States Congress, of that amount to be expended for our arbitration and to be deducted from any award in our favor. I believe this appropriation was without precedent in our history; I am not aware of any similar act by our Government for any man. *For the man who accomplished it for us you had not one word of acknowledgment or gratitude.* As you are aware, the Secretary appointed one of our counsel as his law agent, furnishing him with a staff of stenographers, typewriters, translators, etc. The solicitor of the Department accompanied the embassy, as it might well be called, authorized to engage official quarters in The Hague, and in fact did everything to invest the affair with the externals of importance and evince the interest felt by our Government in the success of our case. In all this, thirty-two thousand dollars were disbursed and as a matter of course, and very properly, deducted from our award. An itemized account of the whole expense was furnished you, and you caused a copy of it to be sent to me accompanied with the remark that you thought certain unspecified items on it should be paid by me. I have never learned what they were, but the demand is characteristic of a small and mean mind. I asked you to name them, but you never did. You probably talked with someone about it who had more sense than yourself or your previous confidant.

Shades of depravity and meanness are not easily distinguished, but judging by my own feelings, I should say that the meanest thing you were guilty of in the course of this affair (and that is saying a great deal) was the paper you required my son to sign as a condition of settling with me. I had given my son a general power to execute any and all papers required in settlement. You exacted from him a release of all demands I had against you for services or otherwise. During the ten or eleven years preceding this Pious Fund award, you were a frequent visitor at my house and often propounded legal questions of your own. I gave you the benefit of my advice and counsel without the thought of remuneration; you can recall services rendered you during this period connected

with the late Mr. and Mrs. Stanford, the estate of Mrs. Fair, etc. I never intended to make any charge against you for those services, although they were strictly professional in their character; your requirement of my son to release you from any liability for these and other things was grossly and gratuitously insulting and intimating an apprehension that I might take an opportunity to make a charge for those services which I had rendered gratuitously. I have forgiven and forgotten the other insults, but I cannot fail to remember as the work of yourself or your counsel, approved by you, this insult as unworthy of a priest or a gentleman, and I abandoned your acquaintance with a pleasure experienced in waking from a painful dream.

I ought not to conclude this without referring to remarkable proof of your frankness, afforded by your conduct in reference to the trial of the suit of Mr. White's widow, last May. Her second husband, Mr. Troy, and I differed as to the amount which I should pay for Mr. White's services in this Pious Fund case, and that lady sued me for what she demanded. When the case was approaching a trial in court, her counsel deemed it wise to prove what Mr. White's services had been and what the fee paid me amounted to, and for that purpose proposed to summon you as a witness. As a matter of politeness, they called on you a day or two before the time appointed for the trial. On your cross-examination, had you appeared, I would have had the opportunity to sift your testimony and obtain answers to various questions here mentioned, on which I am uninformed. I looked forward with hopeful anticipation to the opportunity of an interview on the subject wherein you could not evade, but would have to answer, and answer truly. The appointed day came and it was found that you had left the State a day or two before, and we could not learn of your whereabouts; so we agreed on a settlement satisfactory to both parties, shook hands, dismissed the suit and parted. Some weeks afterwards I learned from a clergyman generally well informed that he knew where you had gone to, and that you were in *Nova Scotia!*

The facts here narrated (the truth of none of which you cannot deny) will enable the reader to judge which of us was guilty of wronging the other or taking an improper advantage of his necessities; whether I was guilty of attempting to extort from you a monstrous fee not due me, or you of cheating me out of a similar amount due me by express contract. My loss in acceding to your ultimatum telegraphed from

Washington I estimate at from thirty-five to forty-five thousand dollars. It was occasioned by the dishonesty here shown, dishonesty practiced for your benefit and with your knowledge and consent; for no act or part of it can you escape moral responsibility. I leave the exact appreciation of my loss to others and having stated the facts I remain, with the respect or contempt they deserve and their narration inspires.

Your obedient servant,

JOHN T. DOYLE.

To MOST REVEREND P. W. RIORDAN,
Archbishop of San Francisco,
San Francisco, Cal.

COPY PROPOSED SUBMISSON TO ARBITRATION.

To the Right Reverend Bishop of Monterey and the Most Reverend Archbishop of San Francisco.

On behalf of Senator William M. Stewart, for whom I am authorized to act, and myself, I propose, for the settlement of the amount of Mr. McEnerney's fee for services in the Pious Fund case, the following:

The statement of facts heretofore prepared by me as amended by Archbishop Riordan, shall be submitted to Judge James M. Seawell as arbitrator with the information that we have agreed that $1,500 shall be allowed Mr. McEnerney for his expenses of travel, etc., and that for his fee for services the Archbishop thinks ten thousand dollars, and we deem five thousand dollars, the proper compensation. This difference of five thousand dollars Judge Seawell is to decide as arbitrator, and determine what sum shall be Mr. McEnerney's fee, in addition to the said fifteen hundred dollars allowed for travel, etc., and the sum to be paid Mr. McEnerney is to be charged to Messrs. Stewart and Doyle, half to each, on account of the fee contracted to them respectively.

The two volumes of the proceedings of the former arbitration and of The Hague tribunal, the protocols of proceedings, and the correspondence between the parties so far as either may deem the same material shall be laid before Judge Seawell, and as it will not be convenient, or perhaps possible, to bring both parties before him together, the Archbishop may advocate his views without the presence of Mr. Doyle, and Mr. Doyle his without that of the Archbishop; but in either such case the party not present may have a stenographer in attendance to inform him of what is urged, that he may, if deemed needful, answer the same. For these purposes the judge will, as neither of the parties can well leave his home, visit each of them by appointment, the time

and place of which shall be made known seasonably to the other. The arbitrator's decision is to be final and shall be made within days after the proceedings above referred to are delivered to him. He may call for any other information or papers he thinks material, and so far as practicable, the same shall be furnished him.

This agreement is made on the understanding and condition that after deducting and holding back sixteen thousand, seven hundred and fifty dollars from one-fourth of the net sum collected by the United States from Mexico under the award, as turned into U. S. gold in Washington, less the expenses charged to the claimants by the Government, the residue of twenty-five per cent thereof shall be immediately, on receipt of money from the Government, distributed to Messrs. Stewart and Doyle, one-half to each; Senator Stewart's portion to be paid as he has already directed, or may direct, and that of Mr. Doyle to be paid by check to his order.

It is also agreed that this whole affair shall be held by all the parties to be confidential, so that neither the existence nor the settlement of the controversy shall become known to others.

The arbitrator shall be offered an honorarium of five hundred dollars, to be disbursed by the Archbishop out of the funds received, and charged one-half to the claimants in the case and the other half equally to Messrs. Stewart and Doyle against the sums coming to them respectively.
Menlo Park, Cal., June 18, 1903.

On behalf of the Bishop of Monterey, for whom I am authorized to act, and on my own behalf, I accept and agree to the foregoing proposal of settlement.
San Francisco, June 19, 1903.

THE PIOUS FUND CASE.

In the Matter of the Distribution of the Award.

FEES OF COUNSEL.

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
COUNTY OF SAN MATEO. } *ss.*

John T. Doyle of said State and County, being duly sworn, deposes and says as follows:

I am a native of the City of New York, now eighty-four years old; I reside at Menlo Park, San Mateo County, California, where I have lived for thirty odd years past. I was admitted to the bar by the Supreme Court of the State of New York in May, 1842, and followed the practice of the law from that time until I withdrew from active practice some twelve years ago, except during an interval of about eighteen months, in 1851 and 1852, when I was otherwise occupied. I drew the petition and, in conjunction with Hon. Eugene Casserly, conducted the proceedings before the United States Land Commission to establish the title of the Catholic Church to the Mission buildings and the churches, cemeteries, orchards, vineyards, and other properties in this State, and procuring patents for said properties from the United States. I alone also made the investigation and discovered and wrote the history of the Pious Fund of California, and adduced the evidence for the claimants of the income of said Pious Fund, before the American and Mexican Mixed Commission, constituted by the Convention of 1868; said Eugene Casserly was originally employed with me in that case, but after his election to the United States Senate, underlet his portion of the work first to Mr. Nathaniel Wilson and afterwards to Messrs. Wilson and Phillips. In that case we recovered an arbitral judgment against Mexico for nine hundred and four thousand and seventy Mexican gold dollars and seventy-nine cents, being twenty-one years' interest on half the capital of the Pious Fund of California at six per. cent per annum. As what took place in that case has a bearing on the present question, I will relate it briefly.

In the winter of 1853–54, Archbishop Alemany had shown me a bundle of papers which he had recently found in his safe derived from his predecessor in office, consisting of copies of letters, etc., the reading of which had led him to suppose that he had perhaps a valid claim against the United States for a considerable sum. He wished me to examine the papers and advise him. I read the letters and two or three Mexican pamphlets that were in the bundle, and advised the

Archbishop that I could not see any grounds for a claim against the United States, but thought there might be a valid claim against Mexico for what was known as the Pious Fund of California. The existence of such a fund in that country was known to all the old inhabitants of the State, although none appeared to have any definite information about it, and even a legislative investigation in 1851 had failed to bring anything material to light about it. I saw no probable way to obtain anything from Mexico for it, until another claims convention should be made with that country, and advised the Archbishop to wait, in hope of such. In the Spring of 1857, he called on me again and, recurring to his Pious Fund claim, wanted to engage the services of Mr. Casserly and myself to endeavor to recover something for it. I had accepted the invitation of a law firm in New York to join them in practice and was on the point of setting out for New York for that purpose, but as the Archbishop pressed this case upon us, offering twenty-five per cent. on what might be collected, as a fee, I told Mr. Casserly that he might sign my name with his own to such a contract as the Archbishop proposed; and with that I hurried to the steamer bound for Panama. I afterwards learned from Mr. Casserly that he had arranged the contract and that it had been agreed to by Archbishop Alemany and Bishop Amat, and I began the exploration and study of the Pious Fund case and its history. I never saw the original contract with the prelates nor heard its contents definitely stated until 1870 or 1871, when the Archbishop sent me a copy of it. Its terms were expressed in a letter to the Archbishop of which the following is a copy:

"SAN FRANCISCO, May 20th, 1857.

"*Most Reverend Joseph S. Alemany, Archbishop of San Francisco:*

"Most Reverend and Dear Sir:—In a matter of such importance " and magnitude as the effort to recover the Pious Fund promises to be, " we feel assured we will consult your wishes in reducing to writing " the understanding on which that business is undertaken by us, more " especially as it is not improbable that a long time may elapse before " the collection of any money would give occasion to recall to mind our " conversation.

"We understand we are to use our best efforts to reclaim and " obtain for yourself and Bishop Amat the Pious Fund of the Californias from the Government of Mexico or that of the United States, " or any other, or to obtain compensation or indemnity for the confiscation of such property; and that we shall advance and pay out all " such sums of money as may be necessary to meet the expenses " we shall incur in the prosecution of the demand. In case nothing is " recovered and received, we are to make no claim on yourself or " Bishop Amat, or your successors, either for money disbursed or services rendered.

"Whenever any money or valuable thing shall be recovered and " received it shall be applied first to the reimbursement of the expenses which we shall have paid or incurred, and after these are " repaid, we shall receive or retain for our compensation one-fourth " part of the residue. The other three-fourths thereof shall be paid to " yourself and Bishop Amat, or your successors or to such other per-

" sons as you may direct or to whom the same may be adjudged. We, " on our part, are to be at liberty at any time, when the expense shall " appear too great, or the probability of obtaining any favorable result " too small, to discontinue the further prosecution of the claim, losing " our labors up to that time.

" You and Bishop Amat, on the other hand, shall not be respon- " sible to us for payment of disbursements incurred, or services " rendered or procured to be rendered, by us unless in the event of " your actually receiving money or property; and if hereafter in the " progress of the affair your superior ecclesiastical authorities, or a " sense of duty on your part, should compel you to transfer your legal " rights to some other ecclesiastical person or body, you and Bishop " Amat shall not remain personally responsible to us for services or " disbursements. In such case, you and he will exercise such influence " as you may have to cause the transferees to acquiesce in and recognize " this engagement, and in case they should refuse to do so, will do no " act to impair such claim as we may have, on the fund itself or on its " future representatives or owners.

" We are, Most Reverend Sir, etc., etc.,

" Eugene Casserly,

" John T. Doyle,

" By Eugene Casserly, his attorney."

The record in that old case shows the further history of that affair, from my original presentation of the matter to the State Department in 1859, down to the adjudication in our favor by the Mixed Commission under the Convention of 1868. The memorial of our claim before that body shows the grounds on which we based it and the grounds on which we recovered, viz.: for interest for twenty-one years elapsed between the treaty of Guadalupe Hidalgo and the Convention of July 4th, 1868, on the valuations, at which the properties of the fund were taken into the Mexican treasury, by Santa Ana's decree of 1842, which we treated as a purchase of them by the Mexican Government. That award in our favor was paid off by Mexico in annual installments, our portions of each of which the Archbishop was accustomed to remit to Mr. Casserly and myself, when received by him. When the first of these installments became payable, a difference as to the division of the fees arose between Mr. Casserly and myself, which, after delay, was settled by a written agreement signed by both of us, wherein I had demanded a provision that the contract between us and the prelates had been fully performed and all reciprocal rights and obligations between us growing out of said contract were terminated. This agreement of settlement was signed by Mr. Casserly and myself, and on the suggestion of I know not whom, we requested the Archbishop and Bishop Mora (who had succeeded Bishop Amat) to sign it also, which they did. Some years afterwards Bishop Mora pointed out to me that this fact might cause the agreement to be construed as a cancellation of the original contract between the prelates and ourselves, and on reading it over I perceived the justice of this criticism. As I had drawn the instrument there was evidently but one thing for me to do, viz.: to accept whatever interpretation in this respect Archbishop

Alemany should put on it, as Bishop Mora expressed his acquiescence in such.

In this state of things I received, on the day of its date, the following note from Archbishop Alemany, together with a check for my share of the payment then last made by Mexico:

" February 24th., 1882. Dear Sir:—Con mucho gusto le incluyo " cambia del dividente del Fondo Piadoso que acabo de recibir. Tal " vez sería bueno estudiar cómo presentar á México, nuevo reclamo " sobre los intereses debidos desde el 1869.

" Yours very respectfully, &c.,

" J. S. Alemany, A. S. F.

" John T. Doyle, Esq."

Of which the following is a translation:

" With great pleasure I enclose you check for dividend on the " Pious Fund which I have just received. Perhaps it would be well to " consider how best to present to Mexico a new demand for interest " accrued since 1869."

I must have promptly acknowledged this note stating that there was a difficulty in the case to be mentioned further on; for on the following day I replied to him as follows:

" Menlo Park, February 25th., 1882.

" *Most Reverend Archbishop:*

" Recurring to your suggestion of a further reclamation against " Mexico, the embarrassment referred to in my note of yesterday arises " thus. When in 1879, I settled the dispute about fees with Mr. Casser- " ly, a material inducement to the pecuniary concession I made was the " absolute termination of all joint interests with him. I accordingly " inserted in our contract of settlement the following clause: ' It is also " ' agreed that the performance of the contract between said Casserly " ' and Doyle and said bishops, first above referred to, has now been " ' completed, and all joint interests and reciprocal obligations between " ' said Doyle and Casserly which may be deemed to have arisen out " ' of it are hereby terminated.'

" This contract of settlement, however, was signed by the Bishops " as well as by ourselves, and on reading it over afterwards, I observed " that it might be construed to mean that the original agreement of " 1857, between us and them, was thenceforth at an end. If such was " the understanding of yourself and Bishop Mora, I, of course, acquiesce " in it; but in that case a new arrangement would be proper. If you " did not so understand it, then evidently it would be desirable to " settle in advance of action all the questions which gave rise to differ- " ences in 1879, including the connection of Messrs. Phillips and Wilson " with the case, if they are to be connected with it.

" Yours very respectfully,

" John T. Doyle."

To this I received no reply, but on the eighth of August, in the same year, the Archbishop, in a letter largely on another subject, said:

"The most important item, however, if I am right, is to study "whether in the event of a treaty affecting also new mutual claims "we should not step in, even uninvited, and intruding, to make some "sort of demand for all yearly interest due for the past thirteen or "fourteen years.

"Respectfully, J. S. ALEMANY, A. S. F.

"John T. Doyle, Esq."

To this I replied as follows:

"Menlo Park, August 15th, 1882. Most reverend Archbishop:— "Either I have not noticed the paragraphs referred to in your note of "the 8th inst. or have understood them differently from you, for I "have seen nothing to excite apprehensions as to the Pious Fund "award under the convention of 1868. If you could have those para- "graphs hunted up and shown me I would know better.

"As regards presentation of a further demand, I have for some "months back felt that the opportunity was probably slipping "by, but what could I do? I called your attention to the peculiar en- "tanglement resulting from the contract of settlement of 1879 between "myself and Mr. Casserly in a note of February 25th, last. This is a "knot which only yourself and Bishop Mora can untie; this ties my "hands. I would therefore respectfully suggest that you confer with "him or of your own authority resolve my difficulty as stated in that "note.

"Very respectfully, JOHN T. DOYLE.

"Most Rev'd J. S. Alemany, Archbishop, &c."

On the following day I received from the Archbishop the only reply I ever had, to mine last quoted, as follows:

"San Francisco, August 16th. Dear Sir:—The within from "the public papers suggested to me the idea that we should intrude on "the parties of the new treaty alluded to and call for yearly interests "due us since 1869. The reading does not seem to me to imply as "others think that the Secretary of the Treasury need not pay any "more awards till the new treaty is settled. But I think I should "request you to demand interest due us since the time of the Mixed "Commission. I am of opinion that you can surely find a way how "to make a demand which naturally could do no harm.

"Very respectfully, J. S. ALEMANY, A. S. F.

"John T. Doyle, Esq."

The enclosure in this was a paragraph extracted from the Alta California of June 25th, 1882. It related to a claims convention supposed by the writer to be in negotiation between the United States and Mexico, not yet laid before the Senate, about which some difficulty had arisen, growing out of the Weil and La Abra cases. It had no relation to our case. My explanation of it to the Archbishop was probably oral, for I find no copy of a letter in reply to his last quoted.

My recollection is that I had a note from the Archbishop in the early days of 1883, again suggesting demand on Mexico for further Pious Fund installments, to which I replied, as in 1882, that it was

necessary first to decide whether the old contract was alive or not; but I do not find such letters. The request and answer may perhaps have been oral.

On February 15th, 1884, the Archbishop sent me the following note:

"San Francisco, Febr. 15th, 1884. Dear Sir:—I am happy to enclose account of installment of the Pious Fund received to-day, and check to your order for $5,917.34/100 which I suppose will be found correct. Now I should beg to say that I believe Mr. Doyle (using if he wishes the other lawyers in Washington) ought to pave the way to make a demand of the annual interest due us on the Pious Fund since 1869. Perhaps this would be a good time, as I believe our government is making some treaty with that of Mexico.

"With kind regards to Mrs. Doyle and best blessings to all the young ones, I remain with best wishes to all,

"Respectfully, &c., J. S. ALEMANY, A. S. F.

"John T. Doyle, Esq."

To this I replied on the next day as follows:

"Menlo Park, February 16th, 1884. Most Rev'd Archbishop:—I have received your favor of 15th instant, enclosing account of monies collected for the eighth installment of the Pious Fund award, and your check for the amount of $5,917.34 (my portion), which I find quite correct, and beg to thank you for your prompt remittance.

"I agree with you in opinion that it is probably a good time to take steps towards reclaiming the installments of interest accrued since the award; and in this last connection would remind you that several months ago Mr. Loughborough, acting on your behalf, had several conferences with me on the subject, and left me to obtain your resolution of the difficulty propounded in my letter to you of February 25th, 1882, which it was admitted stood in the way of any new movement, and which you alone could remove. He never brought me your decision and told me you had never given it to him. From your renewing the suggestion now, I must infer that in the multiciplicity of your other cares, the *status* of this matter has been momentarily forgotten. I am, however, awaiting Mr. Loughborough's reply, and he is, as I believe, awaiting yours.

"I remain, meanwhile, Most Reverend Archbishop, your friend and servant, JOHN T. DOYLE.

"Most Reverend J. S. Alemany, Archbishop, &c."

It may be noted here that Mr. Casserly died, in June, 1883, and Mr. Phillips in or about February, 1884.

Under date of February 18th, 1884, the Archbishop wrote me as follows:

"SAN FRANCISCO, February 18/84.

"Mi apreciado amigo, my many cares and, still more, the difficulties of the case have made me put off reverting to the request I made some time ago. Of course, I did not forget it, but I thought there was no hurry about it, and I wished to study and consult other Bishops. They seem to agree with me in the opinion that our legal coun-

" sel is the one to act. The death of one does not fortunately imply " the death of all. So I think I should continue to request the sur- " viving party or parties to take the proper steps to demand the in- " stalments due us by Mexico, since the award by the Judges of the " Mixed Commission. Respectfully, J. S. ALEMANY, A. S. F.
" John T. Doyle, Esq."

On February 21st, 1884, I replied to the Archbishop's letter of the 18th as follows:

" Menlo Park, February 21st, 1884. Most Reverend Archbishop: " Your letter received yesterday appears to have been written under a " misapprehension of the difficulty suggested in mine of two years since, " which the lapse of time easily accounts for. Allow me for better " understanding of it to recall the circumstances.

" When, on May 2nd, 1879, Mr. Casserly and myself came to a " compromise of seven months' most painful disagreement, I was smart- " ing so under a sense of protracted wrong and so anxious to avoid a " possible recurrence of dispute that I inserted in our contract of set- " tlement the following words, 'It is also agreed that the performance " ' of the contract between said Casserly and Doyle and the said Bish- " ' ops first above referred to has now been completed, and all joint in- " ' terests and reciprocal obligations between said Doyle and Casserly " ' which may be deemed to have arisen out of it are hereby ter- " ' minated.' This I intended simply as a dissolution of joint relations " between Mr. Casserly and myself, resulting from our joint employ- " ment in the case. After the paper was prepared came the suggestion " that the assent of the Bishops to it was desirable, and so it was " signed, not only by Mr. C. and myself, but also by yourself and Bishop " Mora.

" Long afterwards, on referring to it, I perceived that the intro- " duction of the prelates, as signatory parties, opened the language " quoted to a construction not designed by me when preparing it. It " might be understood as dissolving the original contract of 1857 " between us and them, and perhaps you understood it in that sense. " As the blunder was mine, I proposed to take the consequences of it, " and therefore when, two years ago, you suggested an effort to recover " or collect further installments from Mexico I stated the case to you " and requested your decision on which way the agreement of May 2d, " 1879 was to be understood; whether as a dissolution merely of " the reciprocal obligations between Mr. Casserly and myself growing " out of the contract of 1857 (leaving the contract itself in force as " between each of us and the bishops), or as a dissolution of the con- " tract itself, as between the prelates and us. That is the question " to which I am still awaiting your answer, as it will determine my " relations to the claim.

" Your early decision of it is, I believe, desirable to the claim- " ants as, unless my information is erroneous, their campaign should " have opened three weeks ago.

" Very respectfully yours,
" JOHN T. DOYLE.

" Most Reverend J. S. Alemany, Archbishop, &c."

Not long after this letter, the Archbishop and I met and concluded, orally, the discussion thus commenced by letter. He told me that before deciding whether the old contract remained in force between us, or not, he would like to know whether, if he decided that it was canceled by that settlement between Mr. Casserly and me, he could still secure my services in making reclamation on Mexico for further installments of the Pious Fund interest. I told him certainly he could; that my objection was not to undertaking the case, but to doing so in the state of uncertainty as to my position in respect to it. He then said that he would decide that the old contract was at an end; and inquired on what terms I would take the case anew. What was to be my compensation under the new engagement we were to make? I said that I thought the lawyers' fees should be the same as in the former case, viz: twenty-five per cent. of the amount collected. To this, after a short pause and apparant reflection, he replied that he thought that was right. I then said that I would expect to have the choice of my associate, and that the clause of the old contract regarding disbursements should be changed in form to avoid any such misunderstanding as had occurred before. To all this he assented at once, and so on that we closed. As to commencing proceedings at once, we were then both favorable to that course, but I mentioned that the only objection to it was the possibility of Mexico's ceasing to make payments on the old award, of which there were several installments still to mature, if we made a demand. On this suggestion, the Archbishop decided that he would like to consult some of the other bishops before commencing.

A short time after this agreement, I was invited by the Archbishop to attend a conference at his residence, to which he had invited Bishop Mora of Monterey, Bishop Monogue of Grass Valley and his own coadjutor, Archbishop Riordan. The invitation reached me too late to enable me to attend on the day named, but the conference was adjourned until the following day, and we then met accordingly. There were present all the gentlemen named above, except, perhaps, Bishop Monogue; with him I had no previous acquaintance, and am not aware that I have ever seen him since, and cannot say with certainty that he was present, though I believe he was. Archbishop Alemany stated the purpose for which he had called the gentlemen together, and at his request I gave an explanation of the *status* of our claim against Mexico, what we had recovered, and what we had a right to expect, etc. The terms of my engagement with the Archbishop for a further demand were named, and the objection I had apprehended to bringing forward at once our demand for further installments of interest. Many questions were asked me, to which I replied, and am confident that I withdrew before the conference arrived at any conclusion. As a matter of delicacy, I preferred not to hear their deliberations. I afterwards learned that these gentlemen had concluded, and so advised the Archbishop, that it would be more prudent to postpone making our new demand until the old award was entirely, or nearly all, paid up, and in accordance with this opinion, in which, on reflection, I concurred, we waited.

Down to this time I had been accustomed to prepare and have executed each year a power-of-attorney from the Archbishop and Bishop of Monterey to a house in Washington, to receive from the Government our portion of the annual payment by Mexico under the convention of 1868; and in due course of time I used to receive from the Archbishop a check for my part thereof, together with an account showing with demonstrative figures. I prepared such a power in December, 1884, and sent it to Bishop Mora for execution, and received a note about it from Archbishop Alemany in January, 1885. On February 25th of that year, Archbishop Riordan sent me my usual remittance, from which facts and dates I infer that the transfer of the administration of the Archdiocese from Archbishop Alemany to Archbishop Riordan occurred between the dates named. Afterwards, in May, 1885, as I believe, Archbishop Alemany left California for Europe, leaving Archbishop Riordan in full charge of the diocese. After that time he collected our portion of the annual payments made by Mexico to and including that of 1889, and paid me my portion each year the same as Archbishop Alemany had done previously. In 1886, at request of said Archbishop Riordan, I furnished him a written synopsis of the claim of the Pious Fund and the proceedings to recover it, offering further oral explanation if desired. The regular payment made by Mexico in 1888 left but a small sum of the amount due us unpaid, and in 1889 Archbishop Riordan requested me to put in writing the contract I had agreed on with Archbishop Alemany for making further reclamation on Mexico. I had selected Senator Stewart as my associate in the case, and secured his consent to act with me, and accordingly prepared the contract in his name, jointly with my own, and sent it to the Archbishop for examination and approval. He returned it to me with his formal approval on December 23d of that year. On re-examining it I considered one provision (favorable to the prelates) less clearly expressed than it might be, whereupon I made the necessary change and returned it to the Archbishop for re-examination. After retaining it some days he again returned it to me on January 11th, 1890, saying that in his opinion it could not be changed for the better, and requesting to have copies made for execution, which I had done, and it was thereafter executed by all the parties to it. In drawing it I by mere oversight and inadvertance wrote the words, "*The money so due to the Church of California as aforesaid,*" instead of the words "*payment of further installments of interest on the said purchase price of the properties of the said Pious Fund,*" which was really the purpose of our retainer. In doing so I had no thought or intention to limit the demand to be made on Mexico to installments then due and demandable, nor the compensation of counsel to a proportion of such installments; nor do I, nor have I any reason to, believe that either Bishop Mora or Archbishop Riordan, in agreeing to it and executing it, had any such idea. It is certain that Archbishop Alemany, in assenting to it, had not. We were retained to recover and collect from Mexico all that we could on account of the Pious Fund Claim with the agreement that we should receive for our services one-fourth (one-eighth each) of all we should recover and obtain thereof. That was the controlling idea in

the contract. We foresaw that much time was liable to elapse before reaching a conclusion of our labors, and provided for the not improbable death of either or both of the counsel, during the pendency of our proceedings—a very unusual provision I believe. We were all aware that our demand on Mexico was growing larger at the rate of forty-three thousand and fifty dollars per annum, and contemplated the likelihood, which I thought very strong, that Mexico, pressed by our government, would offer a lump sum in compromise and extinguishment of the whole Pious Fund claim, principal and interest, and the contract distinctly looks to that probability. It was also probable that we might be offered a tract of land, or a franchise, or other valuable right or thing in compromise, and that case is also contemplated by the contract, none of which not improbable contingencies was compatible with any other construction of the contract than that we were to have one-eighth, each, of whatever was collected from Mexico, whether the same should consist of money or property or any sort of values.

Presently after the execution of this contract Mr. Stewart and I addressed ourselves to the Secretary of State at Washington, on the subject of our employment, and thereafter, for the succeeding ten or twelve years we continued from time to time, as occasion appeared opportune, to press the subject on the attention of our government and to urge its action. So much of this correspondence, as was forwarded to Mexico to our government, is found in the document published by the State Department under the title of "Diplomatic Correspondence between the United States and the Republic of Mexico Relative to the Pious Fund of the Californias, Prepared for the Use of the Permanent Court of Arbitration, in the case of the United States against Mexico. Washington: Government Printing Office, 1902." The rest remains I presume on the files of the State Department. Our first application to our government was made in the Spring of 1890. As sent from here it was addressed in my name to the Secretary of State to be delivered to him by Senator Stewart. Whether it was signed by himself or not I do not know and it is unimportant.

While Mr. Blaine was Secretary of State, we had reason to think that our claim would be actively pressed on the attention of Mexico and possibly with some result. After he left office, we failed to make any material progress either under General Harrison or during Mr. Cleveland's second term, and my colleague, Senator Stewart, was thought to have lost interest in the case. Archbishop Riordan, who acted really on behalf of the Bishop of Monterey as well as himself, remarked to me on this, and thought Mr. Stewart ought either to exert himself more actively or resign and make room for some one else who would. When Senator Sherman became Secretary I felt warranted, from my long and intimate friendship with his brother, the General, and the politeness the Senator himself had shown me, distinctly in consequence thereof, in believing that I would be able to secure his attention to, and just consideration of the case; and that, I felt persuaded, was all that was needed to secure action by our government; for clearly, on the principle of *res judicata* the former recovery was decisive of our right. The state of the claim, in the Department, in November, 1897, will be seen from an examination of the diplomatic cor-

respondence, the latest document in which, then was Hon. Powell Clayton's letter of October 21st, 1897, and Mr. Sherman's of October 30th of that year; but I believe these communications were unknown to the Archbishop and myself on the 15th of November of that year.

On the day last mentioned, the said Archbishop Riordan came into my office in San Francisco, and after the usual salutations asked me "What can I, or what shall I, do with this man Stewart?" I knew that he referred to Senator Stewart, and to his supposed inactivity in the Pious Fund Case, at which he had before expressed dissatisfaction. We discussed that subject, and after some conversation on it, we concluded, as indeed I think we had already before that time concluded, that the proper way would be for the Archbishop to write the Senator a letter, intimating his dissatisfaction, and inviting him to resign his connection with the case. The Archbishop then requested me to prepare such a letter for his signature. I begged him to excuse me; I told him it was one of the things I was not competent to do. that I was entirely too direct and blunt; that I had no diplomatic talent, and was much more likely to give offense than win consent in such a case; that it required delicacy and tact, and that he was himself the best person to prepare it. He however insisted, and I at last, with very great reluctance, agreed to draft such a letter, as well as I could, and submit it to him for his correction. With that we parted and he left the office. Within a few moments—less, I think, than three minutes—thereafter, he returned, accompanied by Senator Stewart, saying, "I met this gentleman at the foot of the elevator, and brought him right up with me to discuss that matter." I was taken entirely by surprise, and had not a moment to consider how to approach the subject without wounding the feelings of my associate, or any thing else about it. In something like despair, I decided to take share of the blame or censure for the default on myself, and so I told the Senator that the Archbishop was dissatisfied with the slow progress *we* had made in the Pious Fund Case, and thought that, not having ourselves succeeded in moving our own Government to activity, *we* ought to set him free to employ other counsel, who might be more efficient in that direction than we had been, and more to that effect. Somewhat to my surprise, and much to my relief, Mr. Stewart at once assented and expressed his willingness to comply with the Archbishop's desire. I think I said this ought to be expressed in writing, to which he assented, and thereupon, I took a pad of paper and wrote off a draft of a letter to the Archbishop intended to express the idea, and read the same aloud. It was approved by both the Archbishop and Senator Stewart; I had it typed at once, and it was signed by both Mr. Stewart and myself, and delivered to the Archbishop. It was and is in the following words:

"SAN FRANCISCO, November 15th, 1897.

"*Most Reverend P. W. Riordan, Archbishop of San Francisco*:

"Most Revd. Sir:—In respect to the effort to recover the arrears "of interest on the Pious Fund of California from Mexico, we both "agree that the twenty-five per cent of the sum realized heretofore "contracted to us, shall be appropriated to the payment of all profes- "sional services in the case, and inasmuch as it will be needful to

" engage other counsel, and probably to incur other unforeseen ex-
" penses, we agree that the employment of such persons and the
" incurring of such expenses, and the consequent application and
" division of the twenty-five per cent mentioned, shall be left to your
" determination, whenever a conclusion is reached, or a realization
" effected. Our several contracts with you and the Bishop of Monterey,
" will therefore be modified as above, and this letter is addressed to you
" on his behalf, as well as on our own. We are Most Reverend Sir,

" Very respectfully yours,

" JOHN T. DOYLE.
" WM. M. STEWART."

I may say here, once for all, that during all the forty years that I have been in charge of this Pious Fund business, neither the Archbishop nor the Bishop of Monterey ever expressed or intimated the slightest dissatisfaction with my efforts or conduct of the case, or gave me any reason to doubt that they had entire confidence that I was doing all in my power to bring it to a satisfactory conclusion. The Archbishop always spoke to me in the most confiding manner about it, and during the long period I had it in charge, as his chief and most confidential adviser, a relation of great intimacy, confidence, and, as I supposed, of friendship, grew up between us. He was a frequent visitor at my house, and consulted me freely and confidentially about many other matters and transactions of importance, wholly disconnected with this. He was quite aware of the sacrifice I made in taking on myself half of the blame for our ill success in moving our own Government to action in the case, and should, I thought, and still think, have sufficiently appreciated the act, to promptly write me a note declining to accept such sacrifice on my part, even if reserving his decision as to the case of Senator Stewart, to whom he attributed the blame. He did not do so, and I had, at that time, such unbounded confidence in his justice, candor, integrity and honor, that I did not ask him to. I have, however, since learned from his own course, that rules which would control the dealings of gentlemen and friends, are not deemed applicable in cases where an Archbishop is one of the parties. So having signed and delivered this paper I stand by it, be the consequences what they may.

The Archbishop now calls it a contract; I do not so regard it. There was no consideration for it actual or nominal. It was practically a tender by Mr. Stewart and myself of our resignations as counsel in the case and a power to the Archbishop to employ others in our stead, and to do whatever else it lawfully authorized him to do. In considering its scope and effect, as a power, the condition of the claim at the time it was given, and what was needed or contemplated at that time, should be kept in mind, and its scope should not be extended by implication beyond the needs of the occasion. That situation and those needs were perfectly understood by the Archbishop and myself, and may be found expressed in the following extracts from our correspondence:

October 24th, 1899, the Archbishop wrote me, " Before we can
" engage additional counsel, an understanding must be reached with

" Senator Stewart. He left a letter for me in Washington in which he " stated that he had secured the services of two gentlemen who were " working very industriouaIy in the case. and with hope of success. " The one is a Mr. Ralston, a lawyer in Washington, the other" (the " name I omit lest injury to him might attend its publication). "I in- " tended to call on Mr. Ralston, but acting on the advice of Mr. *Mc-* " *Enerney,* whom I met in Washington, I did not. Evidently Senator " Stewart considers himself as engaged in the case, and his status must " be determined before we take any steps to go '(on)' with the suit " without him. *Mr. McEnerney* understands the situation and will " explain it to you *viva voce* when he returns to San Francisco. From " conversation with men of prominence in Washington and Baltimore, " I am satisfied that we can win, provided the right man can be secured " to look after our interests. He must be either in New York or " Washington; I think that I have such a man in mind; and when " we get rid of Mr. Stewart & Co., or effect a compromise with him, " I will come East and *engage, with your consent,* his services. I shall " then have to remain here a few months, very little can be done in a " week or two."

Again, December 7th, 1899, he wrote me, "I am convinced that " the Fund can be collected if we secure the proper person, in Wash- " ington, to push the case." And yet again, on February 28th, 1900, he wrote, "I do not think that much can be done until after the elec- " tion; if McKinley is elected, which is quite probable, we shall have " four years in which to press the matter; I am confident that vigorous " work, in Washington, will win the case for us." And on September 5th, 1900, he writes, " What we need is an energetic agent in Washing- " ton."

On November 9th, 1899, I wrote him my ideas on the subject, as follows: "As to the local counsel to be employed, I need scarce say that " anyone you may select will be entirely satisfactory to me, but I think " it quite important he be a resident of Washington. One domi- " ciled in New York, when he goes to the capital to endeavor to push " his case, is liable on arrival to find the Secretary absent, or perhaps " unwell or so engrossed by other more pressing affairs that he cannot " secure immediate attention. He obtains an appointment for the first " disposable moment, which is three or four days or a week off. If " postponement becomes necessary, as is frequently the case, more de- " lay, involving a week or a fortnight's delay, ensues. Having but one " thing to do in Washington, and many calls to be at home, his visits " to the capital are at material intervals, and those gentlemen in the " departments are cursed with an abundance of time, so that delay al- " ways suits them. I went through all this when getting the patents for " the church property in this State, and speak from experience. On " the other hand, one who lives in Washington can drop into the De- " partment any hour of the day, accept an appointment for any time, " and meet the Secretary, or his confidential clerk, casually on innu- " merable occasions, social or political, and remind him of his affair in " the most natural way possible. He has every advantage.

" But if you decide to take a New York man, think of my old " friends, Coudert Brothers, whom I should think better situated for

" our affair than any other out of Washington. I learn from Mr. New-
" lands that Mr. Ralston is a man of about forty-two years, from the
" middle west ; no relative of our W. C. Ralston. That is all I have
" learned of him."

This correspondence shows plainly, and such was the fact, that there was no such thought in the mind of either of us when giving that power, or after it had been given, of the employment of counsel *to argue a case in any court.* How could there be? We had no case, and no court had cognizance of our affair; we were merely petitioners to our own Government to press our demand on the Government of Mexico, and endeavor to secure a settlement of it for us, and the power given, was to employ a person or persons for that purpose. From the nature of the case he would almost of course be a lawyer.

The Archbishop made no use of this power (whatever its extent or scope) for three years after it was given, during which time he was in doubt what he should do, or whom employ. But meantime, in the autumn of 1899, Senator Stewart was aroused to renewed activity in the case, and secured the services of Mr. J. H. Ralston, of the firm of Ralston & Siddons, Washington, to aid him in it, as he intimated to me in a letter of October 20th, 1899. Mr. Ralston first communicated with me about it in a letter of December 6th, 1899. In my reply to this, which was dated December 13th of same year, I declined to regard him as associated in the case, saying: "I had learned from " Senator Stewart that he had secured the services of Mr. Ralston in " the case, but was unaware that he was acting for, or authorized by " the Archbishop. When those gentlemen last met, we signed, in my " office, a paper leaving the latter free to employ new counsel and make " his own terms with him, and I understood the Archbishop left here, " with the intent of retaining some one new to the case, from whose " efforts better results might be hoped for than we had achieved. I " have not heard whom he selected, and would not feel warranted in " entering into action on the case, in conjunction with any other. If " he chose your firm, I think he should and would have so informed " me; especially as we had practically decided on a *stet processus* until " the new counsel was brought in.

"The Archbishop is now in Europe, and though without reliable " information on the subject, I have reason to suppose he will be " back by May next. Till he is seen or heard from, it seems to me, " we had better wait. There will be no occasion for you to look up " documents in the State Department. I know the whole case by " heart."

The date of the said Archbishop's return from Europe I do not now remember, but immediately after he reached California I communicated to him all that had occurred with regard to the employment of Mr. Ralston, and from time to time thereafter we discussed the situation. Meantime Mr. Ralston was not inactive, and we were making some progress in the Department in Washington The Archbishop for a considerable time was, as his correspondence shows, minded to consider that joint letter as a resignation on part of Mr. Stewart, and had he been able to decide with any confidence upon some one to be named as his successor, would, I do not doubt, have so treated it, and proposed a new

contract with such person and me: but none of the names suggested quite satisfied him. I had originally some prejudice against Mr. Ralston myself, but this gradually wore away as I saw more of his conduct. This state of uncertainty continued down to November, 1900. On the 12th of that month I met Senator Stewart and had a long interview with him, the substance of which I reduced to writing the same day, and communicated it to the Archbishop in a letter, as follows:

"Most Revd Archbishop:—I saw Senator Stewart this morning "and had an extended conversation with him. I told him your objec- "tion to retaining counsel, on a hard and fast agreement, as to com- "pensation, in view of the great uncertainty as to when a result may be "reached. That, having by our joint letter been empowered to divide "the twenty-five per cent. of the recovery reserved for counsel fees "between the counsel engaged according to their respective deserts, you "felt an objection to surrendering your independence in that respect "That you have not retained any other, nor spoken to any other, yet, "but the future cannot be foreseen; official changes in Washington or "other causes may render it expedient to employ some other person, "and you desired to be free to do so, without consulting and obtaining "the consent of two or three gentlemen, one residing here, another in "Los Angeles, a third in Washington, and a fourth (himself) on the "wing between one point and another. I said that for my part I had "been quite pleased with Mr. Ralston's efforts and the progress lately "made, and that I believed you were also. I reminded him that when "I thought it desirable to employ Mr. White I had written an agree- "ment to that effect, and providing for his fee, which I sent to him for "signature, but that he had never replied to my letter. I mentioned also "his long interval of inaction, and finally told him that, all things con- "sidered, I thought the best way would be to let things stand as they "are; it being understood that twenty-five per cent. of the collection is "appropriated to the payment of counsel fees, whereof at present, as in "the original employment, he represented half and I half; that he could "take in Mr. Ralston under him and arrange to divide his fee with "him as he saw fit. I, out of what comes to me, to provide for Mr. "White's compensation. If, in the future, additional counsel was "found desirable, the Archbishop to retain his liberty to employ such, "and to provide for compensating him out of the twenty-five per cent. "appropriated for the purpose. He agreed with me that this was the "best disposition to be made of the question, and I undertook to com- "municate our decision to you, and let him know what you thought "of it."

A few days after that letter, the Archbishop called on me, and we had further discussion, as the result of which we concluded that no one should be employed in Mr. Stewart's place, but that Mr. Ralston should be recognized as associated in the case, as employed and to be paid by him. I was asked to draft a form of letter announcing this result, and did so, but without waiting for it, the Archbishop, on the 23d of November, wrote me as follows:

"My Dear Mr. Doyle: I have delayed until now to answer your "letter of the 12th inst., which relates to your conversation with "Senator Stewart concerning the progress made in bringing the Pious

"Fund to a solution, and the present status of it. I note with satis-
"faction that after a long period of inaction, the Hon. Senator has
"found time to give this matter his attention.

"I do not think it advisable or prudent to engage additional coun-
"sel. The case was undertaken by Senator Stewart and yourself, and
"I must look to you and him for the management of it. Should you
"(the Senator and you) deem it advisable or necessary to bring in
"additional counsel, it will be for you to arrange between yourselves
"for the compensation of him or them whom you may employ. In your
"joint letter the right is accorded me of employing additional counsel
" if I deem it needful, and compensating them out of the twenty-
"five per cent appropriated for counsel fees, and you may rest assured
"that the right given me will be used with discretion towards all who
"have contributed to bring about the desired result, according to their
"respective deserts. Sincerely yours,

"P. W. RIORDAN, Archbishop of San Francisco."

This I made known to Mr. Ralston and Mr. Stewart, and thereafter recognized Mr. Ralston as an associate in the case, and co-operated and communicated with him cordially and confidentially, with the Archbishop's approval and consent.

The joint letter of November 15th, 1897, the Archbishop, in his telegram to the Department, of August 6th, 1903, calls a "Supplementary Contract; but *the letters I have quoted above are necessary to show the true interpretation and completion of it, and in justice, candor and good faith he should have given them, too.*

It will be seen that it arose entirely out of the difficulty we had experienced in inducing our own Government to take a serious view of our claim, and act on it with earnestness and vigor. This we (the Archbishop and myself) attributed to the multitude of claims on the attention of the head of the State Department, and the consequent need of frequent and persistent recurrence to it, to prevent its being forgotton or overlooked. For this we had relied from the beginning on Senator Stewart, whose official and social position in Washington would, we believed, secure attention to his representations. I do not see, and never did, how any lawyer could doubt—I never, myself, for a moment doubted—that the validity and amount of the claim were established as *res judicata* by the judgment of the arbitral Court, created by the convention of 1868; but although each Secretary in turn, Mr. Blaine, Mr. Gresham, Mr. Sherman and Judge Day, gave us words and expressions of encouragement and kindly interest, Mexico, as the correspondence shows, was allowed to avoid any answer to our demand, and procrastinate indefinitely.

Apprehensive of such delay on her part, I had, when retained in the case, selected Senator Stewart as my associate in the belief that his public and social position in Washington would ensure attention to his representations, and his habit of passing a large portion of the year in Washington, would give us practically all the advantage of having counsel on the spot nearly at all times. The value I attached to this was expressed in my letter to the Archbishop of November 9th, 1899, quoted above.

We were not, as I said above, at the time of writing that joint letter of November 15th, thinking of counsel for the argument of our case before a Court. *We had no case to argue; there was no Court either in existence or probable before which our case could come.* Our hope and expectation was by the earnest and persistent urgency of our Government to obtain a settlement from Mexico. That plainly appears from all the correspondence about it. Hence, the power to select and employ additional counsel should be deemed limited to the object we had in view when granting it, not extended by construction to a totally different occasion, arising afterwards and under entirely different and unforseen circumstances.

In this connection it is material to observe that no right of third persons is here affected. The question is between the grantor and grantee of the power, where the intent of the parties alone must control its interpretation. It was given, too, voluntarily and without consideration, and its meaning should not be extended beyond the exigency that gave rise to, or was contemplated in it. For the same reasons it was always revocable.

When the Archbishop finally decided on November 23rd, 1900, to continue Mr. Stewart in the case, to accept his selection of Mr. Ralston as the additional counsel, and employ no other, I considered, and still do, that that was a complete exercise of his power of appointment, and exhausted it, unless Mr. Ralston failed to secure the desired attention of the Department to the case, and it proved necessary to replace him.

Could I have foreseen on November 15th, 1897, when that joint letter was given, that the Emperor of Russia would call Christendom together to consider modes of promoting more extended use of international arbitration; that a conference of the civilized world called by him would frame a scheme of the sort, and constitute a permanent Court for the purpose; that Mexico and the United States would become parties to such a convention, and had I, with all that in view, been asked to assent to giving the Archbishop power to select counsel to plead our case, at my expense, before such a Court, I would have refused. There are many reasons for this, but it is sufficient to mention that I then thought, and still think, myself a much better judge of what is needed in such a person than he is, or ever was.

Thus, then, the matter stood from the close of November, 1900; the Archbishop had decided (and made known his decision) not to treat the joint letter of November, 1897, as a resignation of Mr. Stewart and had exercised the power it gave him of employing new counsel, by the acceptance of Mr. Ralston as such, on Mr. Stewart's nomination. He now appears to contend that he had still the power of employing additional counsel at our expense if he thought it needful; and so far as related to efforts to secure the active pressing of our claim on Mexico, I admit it; but as the negotiation with that country proceeded to a successful termination without such employment, that question is of no consequence; his power to employ counsel had been fully exercised and was exhausted.

Referring briefly to this question of authority to employ counsel, in a letter to the Archbishop on May 18th, last, I said to him: "Our "letter of November 15th was given in order to empower you to em-

" ploy some one who might be more successful in moving our Govern-
" ment to action than we had been. On Mr. Stewart's nomination you
" consented to taking Mr. Ralston as counsel, and he produced the pres-
" sure on Mexico which led to her agreement to arbitrate. The desired
" object then had been completely accomplished and the power given
" for such accomplishment had been successfully exercised and was ex-
" hausted. It may be suggested to you that the words of our letter are
" broader than the intention above named. Very likely; *but I am*
" *speaking of its construction as between gentlemen and friends;*
" *honorable men on both sides.*"

Considering the intimate and confidential relations between the Archbishop and myself for many years preceding his departure for The Hague, in August, 1902, I felt warranted in claiming, for the letter of 1897, such construction as it would receive between gentlemen and friends as above. He never answered that suggestion, and his failure to do so, was, of course, a rejection of it, and put me at arm's length. Evidently he "*stands here for law;*" but on reflection I do not see what he gains thereby; for as no rights of third parties are involved or affected, the words of the power, however broad and general, must be construed according to the intent of the parties at the time it was given, and this was evidently limited to the emergency then in view, and the needs of the occasion.

I should also say here that down to recently I had an impression that our contract (which I had not looked at for a long time) used the words "net proceeds," or equivalent expression, which, in effect called on Mr. Stewart and myself to pay the fees of counsel at The Hague. For this reason, and from a feeling of its intrinsic reasonableness, and that, if paid our stipulated fee, we could afford to pay any reasonable expense incurred in good faith for the cause, I was entirely willing to be taxed for such a fee, for each of the gentlemen who spoke at The Hague. It was only on the 3rd or 4th of August last, when it became a choice of impounding our money in the hands of the Department, and having it recklessly squandered on undeservers by the Archbishop, that I looked at our contract to see and claim its exact terms, and, by telegraph to Senator Stewart, called attention to them. I must, however, say that from the time The Hague arbitration was agreed on I have always felt, that in justice, Mr. Stewart and I ought to pay the reasonable fees of counsel employed there, and I believe that Mr. Stewart shared this sentiment. Indeed, I have so often expressed my willingness to be charged with such, that I presume that I will be deemed committed on that subject; and this compels me to consider the reasonableness of the charges made by the Archbishop for the services of Messrs. Descamps and McEnerney, which I will now proceed to do.

As to Mr. McEnerney: The circumstances, terms and object of his employment and the services actually rendered by him must all be considered.

1. His employment came about as follows:

About June 17th or 18th, 1902, the Archbishop, who had then quite lately returned from the East, where he had seen the gentlemen of the State Department, came to Menlo Park, and as usual called on

me. He told me of the recommendation of Mr. Hay, that he should have distinguished counsel to present the case at The Hague, and his particular mention of Mr. Fred. Coudert, of New York, and Prof. J. Bassett Moore, of Columbia University. I had known Mr. Coudert very many years and we were both aware of his qualifications as a lawyer and a linguist, and his considerable experience in international cases. The Archbishop said that he had called at Mr. Coudert's office, but learned there that the state of his health would forbid his undertaking our case. As to Prof. Moore, he felt a good deal of doubt about employing him, and had not tried to see him. He had sought some advice from Archbishop Corrigan as to the selection of a person, and had been recommended by him, or by someone connected with him, to a gentleman whose name I cannot now recall; but he had not, I think, called on the person so recommended. It was someone I had never heard of, and, as we supposed, a local celebrity, (and I imagine of very moderate celebrity.) He asked me to name whom I would suggest. This I was unable to do, and pointed out the impossibility of it, because, as the nominations to the Court then stood, the members were an Italian, a Russian, a Hollander and an Englishman. Who could say what would be the language of the Court, or in what tongue it should be addressed? The Archbishop's strongest ground for pressing the employment of additional counsel on the trial was the great influence of the "*living voice.*" I asked in what language the voice should speak? French was, of course, likely to be adopted as the language of the Court; and, except Mr. Coudert, I could not recall the name of any person to whom I would be willing to entrust the case, who was capable of conducting it in that language. In fact I did not see how, with a trilingual or quadrilingual Court, there could be any oral discussion beyond mere "explanations." I believed the case would have to be argued in writing, probably with translations. If oral discussion took place I thought we would have to rely on local counsel. As to Prof. Moore, I agreed to write to New York to make inquiries about him; and I did in fact write at once to Mr. Abram S. Hewitt and two other gentlemen for the purpose.

With that, I think we parted that day. After an interval of a few days, the Archbishop returned, and the subject was renewed. As to Professor Moore, notwithstanding the high appreciation of him received from New York, we were quite of one mind, that he would not probably suit us; we agreed that *it was not a college professor that we needed, but a practicing lawyer,* and this for obvious reasons. I was still unable to think of any one whom I would recommend, and, after a time, the Archbishop proposed Mr. McEnerney. I told him there was no lawyer in San Francisco to whom I would prefer to give the advantage of the employment, over Mr. McEnerney, but his selection did not in any way meet the difficulty. *He understood no other modern language than English.* Where would the "living voice" come in? etc. He cannot understand the Court, nor it him. *He replied that he did not want him to make a speech or an argument, but there was an umpire to be selected, and perhaps local counsel to be employed; that Mr. McEnerney had an excellent judgment of men, and he wanted his aid in choosing an umpire and in the selection of local coun-*

sel should such be employed. This sudden shifting of his ground, and the utter flimsiness of that now taken, showed me that for reasons of his own, he wanted badly to take Mr. McEnerney with him, and was willing to put it on *any* ground to secure my consent. Ever since the first nomination of Arbitrators, and on both these visits to me, he was evidently quite frightened and nervous about the coming arbitration ; so much so, that I felt really sorry for him, and consented, very much on that ground, to his taking Mr. McEnerney into the case and taking him to The Hague with him. I assumed, and, as I still believe, correctly, that he had talked with Mr. McEnerney about the matter, and learned from him that he would be gratified by being employed in such a historical case, but could not come into it without my consent. This I more readily gave because I felt most kindly towards him. Almost immediately after thus getting that consent to his proposal, the Archbishop rose to take his leave, saying that he must go now, but would see me again before starting. With that he left. Down to that time he had visited me quite frequently ; say as often as once a week ever since the agreement to arbitrate had been arrived at. From this time forth, however, his conduct changed completely ; I cannot recollect that he returned before starting for Europe, but my son, who was present at the interview last mentioned, tells me that he did, and he recollects the conversation that occurred; I do not; I therefore leave him to state it. I recall, indeed, some remark of his about Mr. McEnerney making a close bargain with local counsel, if such were employed, but my memory of it is imperfect, and I should say it occurred at the interview I have just described. *After his return from Europe he distinctly avoided me.*

We had no more need of Mr. McEnerney's services on the argument than a stage coach has for a fifth wheel. What could he contribute to our success that we had not already? I could not then, nor can I now, imagine anything. Why then, it may be asked, did I consent to take him into the case? Solely to gratify the Archbishop (who wanted some one to sustain his failing courage), and at the same time to do a service to a rising man of talents, whom I esteemed, by putting him in a position to connect his name with a case that would surely be historical, as the first under the Hague treaty; I supposed that the Archbishop's motive for selecting him was gratitude for past gratuitous services, and I still continue of that opinion, and will still continue until I shall have had a full opportunity to interrogate the reverend gentleman on the subject and he denies it and gives another explanation. That Mr. McEnerney was gratified by the position, and that it was probably sought by him of the Archbishop, cannot be doubted by anyone who recalls the newspaper flourish of trumpets over *his* triumph in the case after his return, which must have proceeded from himself or some close friend of his.

Having given my consent to his employment in the case, I consented to write and invite him, which I did on the same or the next day, as follows:

"The Archbishop tells me that he wants to retain you in the "Pious Fund case, and has no doubt spoken with you about it. You "know, I think, very well that no associate would be personally

" more agreeable to me; but you will have to give me what you can " spare of your time *down here*, where the papers, books, &c., are, to " become acquainted with the details of facts, the *status* of the case, &c. " I propose to you to devote July fourth and the following Sunday to " that business—if however any other days will suit you better, I will " be happy to adopt any you may select. Sherman and I are at work " here pretty steadily on it.

" Meantime the Archbishop should let you have his copy of the " book about the case, the reading of which will do a great deal for " you in the way of information."

Mr. McEnerney came to see me as proposed; I related to him orally, and furnished him in print with, all the information he ever obtained about the case, including all the documents and other proofs, as well as the arguments of counsel and opinions of the commissioners and umpire in the former arbitration, under the convention of 1868, contained in the first volume of the proceedings printed by the State Department. He left San Francisco July 30th to join the Archbishop in Chicago and cross over in his company. They sailed from New York August 6th, and after ten days spent, as I supposed, in England, reached The Hague I believe August 25th. Thus the circumstances and occasion of Mr. McEnerney's employment were in brief, that on the eve of the Archbishop's departure for Europe, to attend the sessions of the Court at The Hague, he was invited to accompany him; the object of this employment being distinctly, *not to make a speech or argument in the case but to aid the Archbishop in the choice of an umpire, and the selection of local counsel should such be desired.* Knowing no language but English, there was little likelihood of his being able to communicate, except by signs, with any gentleman proposed as umpire or counsel, and his judgment of them, therefore, would have to be founded on physiognomy.

Mr. McEnerney's labours in the case, for which Mr. Stewart and I are called on to pay ten, or perhaps twenty thousand dollars, were historically as follows:

The members of the Court met on September 1st and chose the umpire, in which proceeding neither Mr. McEnerney nor the Archbishop were permitted to take part. What they were doing or trying to do between the 12th and 24th of August, in regard to the Pious Fund case, let them declare; I cannot.

Some portion of the time between August 25th and September 15th, Mr. McEnerney must have devoted to the study of the Pious Fund case, acquainting himself with its historical details. In course of this he constructed, as I am informed and believe, what might be called a historical card-index to it, and proceeded to reduce to writing his study of the case in historical form. It is presumable that he intended or expected to make this the basis of a brief on the questions involved and submitted to the Court by the protocol, which he might present at a futnre day. That historical study was not completed by September 15th, and down to that date he had no expectation of making an oral argument in the case. This he mentioned, as I have been informed and believe, more than once to the gentlemen concerned in it, on our side, saying that he did not

intend to make any argument; that he had not come there for such purpose; that he had come as a friend of the Archbishop, &c. So clearly was this understood that when Mr. Ralston, apprehensive of the need of credentials of some sort to the Court, telegraphed for such a document, giving the names of Judge Penfield, Senator Stewart, Mr. Kappler and Mr. W. T. S. Doyle, as of counsel for the United States. Mr. McEnerney's name was, in consequence of these disclaimers, omitted from the list. Afterwards, on learning that he might submit an argument, a separate telegraph was sent adding his name to the list, as also of counsel for the United States.

On September 15th French was announced as the language of the Court, with the privilege of addressing it in English by counsel who desired to do so. On this announcement, Mr. McEnerney appears to have decided to avail himself of the privilege, and to speak. The order in which the speakers should succeed each other was, of course, with Mr. Ralston, as the official organ of our Government, and it was arranged by him that Senator Stewart should open the case, followed by Mr. McEnerney, and then by himself, the reply being reserved for Judge Penfield, as the law officer and representative of the State Department. Hence, Mr. McEnerney had to commence his discourse on the conclusion of Senator Stewart's argument. At that time he had not, I believe, quite completed the paper I have called his study of the case, and probably had not even commenced a brief on the two questions presented in the protocol. Called on under these circumstances to speak, he appears to have done the only thing possible in that condition of incomplete preparation, viz: He gave to his paper, which I have called a study of the case, the title of "*Supplementary brief, on behalf of the United States*," sent to the printer, and had proof sheets of it, as far as set up, with him when he made his address. These he used as notes, from which to speak, enlarging and expanding as he saw fit, and thus he occupied the residue of the seventeenth and all of the fore part of the next adjourned day, which was the 22nd. This matter is not stated on my own knowledge; part is given on information, and the rest can be plainly read between the lines, by comparing his "Supplemental brief on behalf of the United States," which is his study of the case, and his oral discourse, which appears in the *proces verbal* of the proceedings, where it occupies from the foot of page 43 to the middle of page 104. The corresponding pages of these texts are as follows:

Pages of Supplemental Brief.		Pages of *Proces Verbal*.
Page 4	corresponds to	Page 44
" 5	" "	" 45
" 6	" "	" 49
" 9	" "	" 51
" 10	" "	" 52
" 11	" "	" 53
" 12	" "	" 54
" 13	" "	" 55
" 15	" "	" 56
" 17, 18, 19	" "	" 57

Pages of Supplemental Brief.		Pages of *Proces Verbal.*
Page 19	corresponds to.....	Page 58
" 21	" "	" 59
" 22	" "	" 60
" 23	" "	" 61
" 27	" "	" 64
" 28	" "	" 64
" 29	" "	" 65, 68
" 30	" "	" 70
" 31	" "	" 70, 71
" 33	" "	" 72
" 34, 35	" "	" 73
" 36	" "	" 74
" 37	" "	" 75
" 38	" "	" 78
" 39	" "	" 79
" 41	" "	" 81
" 42	" "	" 81
" 44	" "	" 88
" 45	" "	" 91
" 46	" "	" 92
" 47	" "	" 92, 93
" 48	" "	" 95
" 51	" "	" 97
" 52	" "	" 98
" 54, 56	" "	" 100
" 58	" "	" 101

When he got thus far his proof-sheets were exhausted, and he says (p. 101 of the *proces verbal*) "I consider these defenses one after another in my brief, *now nearly prepared*, and need not consider them orally." This paper called supplemental brief was completed, I know not when, thereafter; the printed copy bears the date of September 25th, but I believe it was not ready so soon, and, in fact, that it was not presented to the court at all.

This acceptance of a sudden call to speak, by one only half prepared to do so, accounts logically for the diffuse character of his address and for its failure to treat the questions propounded in the protocol.

When, on June 12th, 1902, the Archbishop named ten thousand dollars as the price he set on Mr. McEnerney's services, I told him that I put them at five thousand, promising to give my reasons therefor afterwards. I never did give him such reasons, because our correspondence strayed away from the subject, and no suitable opportunity recurred for it. I shall therefore give them here. The governments had invited five very eminent European publicists to act as judges in this case, and by common accord, after it was decided, each of them was paid an *honorarium* of five thousand dollars for his services, those who came from a distance being also paid an additional thousand dollars, to cover expenses, travel, &c. Now the studies of these five judges, the sources of their information and the time necessarily consumed by them in the business of the arbitration were, as nearly as

possible, identical with those of Mr. McEnerney, and as it could not be claimed for him that in seniority, position, standing in the profession, reputation, talents, attainments, or in any respect, he was the superior of those gentlemen, even if he could be accounted their equal (which I do not admit), I took their compensation as the standard for his, which I thought, and still think, did him no injustice.

As I am informed, Mr. McEnerney, more than any other, is responsible for the money in which our recovery is expressed, for he opposed any discussion of that question, and, backed by the Archbishop, his counsel prevailed. This blunder cost us nearly sixty per cent. of our award, as we were clearly entitled to a judgment for Mexican gold.

As to the sum demanded for the services of Mr. Descamps:

The official minutes of the Court, and the printed *proces verbal* of its proceedings, state that when it met for business on September 15th, note was taken of the names, &c., of all the counsel on each side, and among them will be found Mr. Descamps' name, expressed as follows: "M. le Chevalier Descamps, Senateur du royaume de Belgique Secre-"taire Generale de l'Institut du droit International, membre de la cour "Permanente d'arbitrage." Such, therefore, are his titles. As to his services, and their value, I must observe that I had arranged to have duplicate sheets of the proceedings sent to me, as fast as they were printed, so as to keep myself informed of what was going on at the front. I learn that the practice was adopted there of having the stenographers write out the remarks of each counsel, as speedily after the close of the day as practical, and handing the same in typewriting to the speaker, for correction, which was expected to be completed inside of two days. The corrected MS. then went to the printer and was set up and ready for issue the next day but one thereafter. This course was taken with Mr. Descamps' remarks, as with the others. But when the typed MS. furnished him by the reporter was due, he was not ready to return it, and asked further time. At the end of the extended time, the printers telegraphed for it, but without success, and after having held the press back several days waiting for him, they finally printed his speech as reported, and proceeded with the printing of their report of the proceedings. After the close of the arguments and submission of the case, just before the Court's announcement of its decision, say October twelfth or thirteenth, Mr. Descamps reappeared at the Hague with a printed version of his speech in pamphlet form, very different from the speech actually delivered by him, *and he induced the printers to substitute this, or another version, for the matter which they had already worked off in the proces verbal.* It was much shorter than the original speech (which was conspicuous for its diffuseness and garrulity), and differently arranged. Its substitution involved the destruction of forty pages (281 to 321) of the matter already printed, and the substitution of others in their place; but as the revised speech was so much shorter than the actual one, the new matter, in order to fill up the space, had to be heavily leaded, and, as even that remedy proved insufficient, one page, which should have been 318, had to do duty for itself and 319 and 320, and it is so marked in the edition of the Volume made up at the Hague. Even the revised speech is a poor affair enough, but as

it was only made public after the decision had been made, and was ready to be published next morning, it can, by no stretch of courtesy, be called the Chevalier's speech, nor can he have any credit for it as a contribution to our success. The merit of that production will have to be judged by the original report of it, which I am able to furnish from sheets sent me from the Hague as they were originally published. Speaking of it in a letter to the Archbishop under date of January 31st, 1903, in response to one wherein he informed me that he had received a bill from Mr. Descamps for five thousand dollars, I said:

"The sum of five thousand dollars for Mr. Descamps' services, if "expressed in American money, would be so very excessive, enormous "in fact, that I must presume he means to demand dollars of the same "kind that were awarded us by the arbitrators; but even measured in "such, it is, in my opinion, quite extravagant, for the following rea-"sons:

"He made no original examination or study of the case, took no "part in the preparation of it for trial, the determination of what "proofs should be adduced, or what line of argument taken. He had "no responsibility as to the choice of arbitrators, or the terms of the "submission. All these things he found ready to his hand, and his "whole task was limited to an *extemporaneous* discourse, on *one only* "of the two questions presented by the protocol by which the Court was "convoked. If a written opinion supported by argument had been de-"manded for presentation to the Court, five thousand francs, or a thou-"sand dollars, would have been an ample fee, and justified only by the "magnitude of the demand, and the dignity of the tribunal. He dis-"cussed only the single question of the application of the doctrine of "*res judicata* to the case at bar, and as to that his discourse, though of "inordinate length, contained not a single novel or striking thought, "suggestion, or illustration, nor did he cite any authority. It was re-"ally no satisfactory answer to Mr. Beerneart's argument, and its read-"ing suggests the wonder that one could speak so long, and yet say so "little to the purpose. His own opinion of it may be gathered from a "comparison of the stenographic report of the speech as actually de-"livered, with his printed version of *what he would like to have said*, "as inserted in the *proces verbal* after the case had been decided.

"A point in the case on which Mr. Descamps' knowledge of Con-"tinental law and habits of thought might have been of material ser-"vice to us was entirely neglected by him, and greatly to the loss of "his clients. I refer, of course, to the kind of money in which the "recovery should be expressed. In this country we have become so "accustomed to contracts for gold coin, or for currency, and to judg-"ments recovered in either money, that we naturally assume the same "familiarity on the part of intelligent people elsewhere. Early in our "correspondence, in this case, Mr. Ralston enquired of me what have "we to show to justify us in demanding gold from Mexico. In "reply I referred him to Sir Edward Thornton's award, which was for "so many thousand *Mexican gold dollars*; the *kind of dollars* intended "being just as much *res judicata* as their *number*; which entirely "satisfied him, as it would, I think, any American lawyer. On the con-"tinent of Europe, however, it appears that silver is almost universally

"looked on as standard money. The French call it simply *l'argent.* "The franc, the lire, the mark and the rouble, their monetary units, are "only coined in silver, so that their idea of *money* and *silver* are "almost identical.

"A continental lawyer, therefore, should have appreciated the dan- "ger of an award in that metal and warned us earnestly of it. He "was properly *the one* to point out to the judges, whose ideas on the "subject he was familiar with and probably shared, that the naming "of a particular kind of dollars in the judgment went directly to the "amount of the recovery, just as the words 'sterling' or 'Turkish' "after pounds would; so that a recovery of coin of a particular kind "implied, distinctly, a debt due *in that sort of coin.* Mr. Descamps "saw the danger, yet all he had to say on that point was, in substance, "that silver was a depreciated currency, and as Mexico was not called "on for interest on the arrears, it was not just to permit her to pay "them in depreciated money! I cannot but think this neglect of duty "on his part largely responsible for the error of the court in giving us "judgment in Mexican money. For the argument is very plain, and "logically conclusive. The word dollar alone is no measure or expres- "sion of value. There are fully twenty different sorts of dollars in use "as money, all different in value. Mexico has two sorts, the silver "dollar and the gold one, of different values. Hence an award of a "number of *Mexican gold dollars* is judgment for a different sum "from one of Mexican silver dollars, and the word *gold* is an essential "part of the definition of the sum awarded.

"Mr. Descamps' conduct on the hearing was not what I think it "should have been. It showed more desire to aggrandize his own po- "sition than to win the case, which should have been his sole object. "The United States was plaintiff, and the delegation—I might almost "say the embassy—that it sent to The Hague, with the large appro- "priation for expenses, made plain the intention to evince its earnest "interest in the result. There was a law agent expressly named for "the purpose, and, with him, a staff of stenographers, translators, type- "writers, etc., and even the chief law officer of the State Department "accompanied the mission as associate counsel. Mr. Descamps' per- "sistent effort to secure for himself the post of honour, and the final "reply, on our side, to the exclusion of Judge Penfield, to whom it prop- "erly belonged, showed more desire for self-glorification than for our "success. The firmness of Mr. Ralston who as representing the U. S. "was *dominus litis* saved us from this error.

"My conclusion is that if Mr. Descamps is paid one thousand "American dollars he will be more than amply remunerated."

My opinion of Mr. Descamps' services, and their value, remains as expressed in that letter. His argument, as pronounced in court and reported by the stenographers, is one of the most wordy and worthless I remember ever to have read. I have made a translation of it—that is, so far as it admits of translation into English—which I will present. There are some passages in it which in our language would be consid- ered nonsense, and I have left them in the original French. Perhaps they may pass, as coming under the head of "*hyfalutin.*"

I am not alone in this judgment of Mr. Descamps' garrulous pro-

lixity. On page 309 of the *proces verbal* it will be seen that he was distinctly rebuked for it by the president of the court, who, at the opening of the session on September 30th, whereat Mr. Descamps was to resume his speech, said, after announcing that thereafter the sessions would be continuous, "*Le tribunal, sans vouloir en aucune manière enchainer la liberté des orateurs, et tout en respectant leur liberté, experime le désir que les conseilles veuillent bien, dans leurs discourse, éviter, autant que possible, des répétitions inutiles.*" (The Court, without wishing in any way to curtail the liberty of the speakers, and fully respecting such liberty, expresses the *desire that counsel would in their arguments avoid, as far as possible, useless repetitions.*) Mr. Descamps' response to this rebuke is differently given in the two versions of the *proces verbal* that I have referred to. In the original report of the stenographers he says, "*Je vais Messieurs me conformer immédiatement aux sages prescriptions de notre President, en me bornant*, &c." (I proceed, gentlemen, to conform promptly to the wise direction of our President, by limiting myself, &c.) In this, which is doubtless the true report, he accepts the censure and applies it to himself with the humility of a schoolboy, case-hardened by numerous whippings, who is ordered to stand up for another, and at once promises reform. In the revised version the rebuke is not suppressed—that the printers would not probably agree to—but Mr. Descamps was allowed to edit his own reply and is made to say, "*Messieurs les arbitres je ne prolongerai pas autant que je pourrais le fare le debat*, &c." (Gentlemen, I will not prolong the debate so far as in my power.) What he meant to say here doubtless was, I will, as far as possible, avoid prolonging the debate; but writing probably hurriedly, in the printing office, he blunderingly put it as above.

I have mentioned our objection to the employment of Professor Moore, even on the recommendation of the chief of the State Department, to whose intelligent interest in our case we were so much indebted. I deemed a practicing lawyer indispensable; to such a one I could communicate suggestions or objections in technical language and with their full force. The maxims of jurisprudence and the mode of reasoning on professional subjects would be familiar to him. Besides a professor addresses a class of pupils whom he is to instruct. His words are to be Gospel to them. The lawyer addresses a court of superiors, whose judgment he seeks to convince. There is all the difference in the world, as I pointed out to the Archbishop, and he agreed. Yet on going to Europe he proceeded to employ a college professor who had no forensic experience and had probably never addressed a court of law in his life. This I inferred from his want of technical knowledge and the tone of his speech before I had learned the fact authentically, but the fact proves to be just as I had conjectured. His absolute ignorance of the laws of evidence is shown on pp. 314 and 318 of the stenographic report. He had constructed a fantastic argument in favor of a recovery in gold, based on the exact meaning of the Spanish verb *entregar*, which he contended signified "*to deliver into the hands of*," and thought it material to establish authoritatively the signification of the word *entregar*. *For that purpose he placed on the table of the court a couple of dictionaries, one Spanish and Engtish and the other Spanish and French, which he called "official"!* Any legal practitioner would have told him

that that is not the way to prove the meaning of a foreign word: and as a teacher he should have known better than to call any bilingual dictionary *official*, for there is probably no such thing in the world. To make a dictionary such would require the action of two or more Governments.

Whatever the motive for employing the Chevalier Descamps in the case, it plainly could not have been his competence, or ability in forensic discussion. He wearied the judges, as shown by the rebuke of September 30th (p. 311), and even wearied himself, as he declared at the close of the session of the day before (p. 309.)

I believe he was an old college-mate of the Archbishop, at Louvain, who gave, as I am informed and believe, as the reason of employing him, his (*Mr. Descamps's familiarity with the canon law!* The Chevalier achieved during the argument of our case the unique distinction shown above of being formally rebuked by the Court for his garrulity, and requested to avoid as far as possible such useless repetitions.)

Mr. Descamps did absolutely none of the labour of the case. He took no part in deliberation or the determination of any question of management that arose, in fact did absolutely nothing, except deliver that empty and long-winded extemporaneous speech (the publication of which he himself flinched from), and procure a mutilation of the *procès verbal* by the substitution of an after-written argument, for the true record of his doings. Nothing but the fact that he appeared as counsel for the United States, which cannot condescend to chaffer with him about a thousand dollars, entitles him to any fee at all, for he was absolutely useless. The Archbishop may squander money on him and thus magnify his own importance among his old college mates at Louvain, but I object to his using my money for such ridiculous purpose.

I have thought it appropriate to make the foregoing observations on the amounts chargeable to Senator Stewart and myself for the services of the eleventh-hour men who came in to take the part of supernumeraries to crowd the stage at the close of the last act of the drama and demand an enormous share of the spoils and about all the honors of victory from me, who, after twenty-two years' successful service and an honorable discharge in 1879, had ten years later reinlisted for the war; whose zeal and efforts had never flagged, and who carried the case to a successful conclusion. But I have yet to complete my relation of facts in this case and how this unseemly controversy comes here for decision, a narrative which I interrupted for this discussion.

The Archbishop and Mr. McEnerney, as I understand, left The Hague about October 31, before the decision of the case was pronounced, and spent about six weeks traveling in Europe. (As Mr. McEnerney's journey was at my expense, I may without impertinence express a desire for information as to the particulars of the tour and how it could affect the decision of our case.) They parted before reaching home, which Mr. McEnerney did, I believe, on the sixth of December, 1902, and the Archbishop about the thirteenth of the same month. If I make any material mistake in these dates the gentlemen will please correct me. I wrote to congratulate the Archbishop on his return,

and not very long after he came to see me, Sunday afternoon December 21st, 1902. We talked of indifferent things, but he abstained from saying anything about the business of the Pious Fund or of the arbitration. I thought this silence singular, but at the time attached no importance to it. Not long after that, he looked in on me again, I think, about January 5th, 1903, but his visit was too short to speak of business, as he had, as he told me, to leave me to attend some function of his college here, so we could not speak of the subject we were both so deeply interested in, and in which so important an event as the final decision had occurred. I never met him again until the 3rd of June following, though he made and broke many appointments for the purpose.

I had foreseen the importance of settling the compensation of the parties who had played subordinate parts in the case, as early as possible, and especially before any payment by Mexico; and as early as December 26th, 1902, wrote to the Archbishop to enquire the amount of the charges of Messrs. McEnerney and Descamps. He replied on the 29th, that he had received a bill from Mr. Descamps for five thousand dollars; that he had not settled Mr. McEnerney's fee and would not without consulting me, adding "I am coming to see you on the "first opportunity." But he did not come.

On January 6th, 1903, he wrote me, "I intend to be in Menlo on "*Thursday*" [January 8th], "and will call at your house not later "than 11:30 A. M." But again he did not come.

On February 4th, he wrote, "I shall try to run down to Menlo next week. Again he did not come.

On Feb. 24th he wrote, "I * * * have for S. F. Thursday and bring it with me; I told McEnerney to tell you what has been done in the Wilson matter."

On the 25th he writes, I must defer my visit to Menlo till Thursday, 26th: will come by 10.30 train. He did not come.

On April 29th he wrote, I intended to see you long before now, but have been unwell. I went one day to the seminary fully intending to pay you a visit in the afternoon, but felt so unwell, &c.

At none of these various times thus appointed did he appear. I begin now to think that he fixed the times in advance on days when he foresaw that he would be otherwise occupied.

On January 31st I wrote to him discussing the question of the fees of Messrs. Descamps and McEnerney at length (the letter I have inserted above.) In it I expressed the opinion that a thousand dollars was the most that should be paid Mr. Descamps (giving my reasons and pointing out that the question regarding Mr. McEnerney's was not how much he might reasonably pay him, but how much thereof should properly be charged to Mr. Stewart and myself.

On February 4th he replied to this as follows: "I have only time "to acknowledge the receipt of your letter. I am very busy and in "addition I am suffering from a severe cold. Then your letter is "such that it requires an answer by letter. I do not think that "you take a correct or just view of the situation, from the fact that "not having been at The Hague it is impossible or difficult to form "a correct estimate of the difficulties and dangers surrounding the case

"I acted on the advice of Mr. Stewart, or to put it more correctly, Mr. "Stewart was of the opinion that I acted judiciously for the best inter- "ests of the case. I shall try to run down to Menlo next week." The reply in extenso intimated in this never came and his effort to come to Menlo next week, so far as meeting me was concerned, proved, like all his appointments for the purpose, a failure.

On February 4th I received a Washington telegram that Mexico offered payment in bank notes, communicated it to the Archbishop, and on the 6th he answered: "Mr. Hay is the best judge of the matter "referred to by Mr. Ralston; I am willing that the decision should be "left to the Secretary, Hay. I am still suffering from a cold and in "addition from a severe attack of intercostal neuralgia."

In February (I cannot fix the date) he went off to Pasadena for an indefinite stay, all his promises and efforts to see me about the business that so deeply concerned us having failed. One of the two occasions on which he did call on me after his return from The Hague was a Sunday, when, had I proposed to talk of business to him, he could with great ease have put me off by suggesting a more appropriate day, and on the other he had not time to stay.

Yet during that time he found leisure to pay a day's visit to the seminary (my next neighbour on one side), and on another to take lunch with my immediate neighbour on the other side. In each case, however, he did not feel well enough to call on me, as he purposed, although on a previous occasion he had come to my house when sufficiently ill to require the aid of a physician. Looking back over his numerous appointments and equally numerous disappointments I should have been dull indeed not to perceive that he was shunning me. When he said he was anxious to see me, charity compels me to suppose that he deceived himself; what he was anxious for was *to have seen me* and got through with an interview that he foresaw would be so disagreeable and difficult to conclude without disclosing a purpose he wished to conceal, so that every time he proposed to do it he shrank from fulfilling his promise. I surmise, but have no knowledge, that he was cautioned by Mr. McEnerney against meeting me, lest he might incautiously say or assent to something he desired not to. This conjecture appears confirmed by his subsequent evasive letters, composed by Mr. McEnerney, and the control of his actions exercised by the latter.

Mr. McEnerney's casual disclosure to Mr. Keppler, in their interview of October 26th, that he had returned from Europe with the intention of distributing the award by allowing us only an eighth each of 21 33 of the amount of the main recovery explained the whole mystery of the Archbishop's conduct. It was an essential part of his scheme to get the whole award into his own hands before we could suspect this discreditable design and only to disclose it by the demonstrative figures properly preceding distribution. He could then affect astonishment on learning that we understood our contract to mean just what it said, viz: that we were each to have one-eighth of what was received and collected from Mexico, and if the business had been permitted to take that course he could have put us to an election between a compromise of our rights satisfactory to him, and

a suit against him for our fees; a litigation which he rightly judged I would regard as odious and detestable. In our long and intimate intercourse he had probably heard me say that I had got through about half a century of active practice without ever suing a client for fees (which is true). In fact, the school in which I was brought up regarded such an action as unprofessional. The men who were prominent at the New York bar when I was admitted to it, and commenced practice, George Wood, George Griffin, Charles O'Connor, Wm. Curtiss Noyes, Daniel Lord, Dudley Selden, Francis B. Cutting, Prescot Hall, the honored memory of most of whom probably yet lingers in Washington. The records of the Supreme Court attest their learning and ability. These were the men we young ones looked up to as exemplars, and among them such a thing a suing a client for fees was unheard of. My correspondence with the Archbishop from the time I discovered that there was a difference between us on this subject of fees shows pretty clearly (what was the fact) that for the sake of avoiding such a controversy I was prepared to make almost any sacrifice. But it passed his comprehension that any concession would be assented to that would satisfy his rapacity, and as he could not look me in the face and seriously claim what his attorney has put forward here as his right, he had to shun me. That, in my opinion, is the whole secret of his persistent avoidance of me from his return from Europe in December, 1902, down to June 3d, 1903, and his then coming to me, unannounced and only able to give to this business the interval between two morning trains to the city, and never coming afterwards.

On April 27th, being, perhaps, unduly impatient at these many promises and failures to perform, I was importunate enough, while sending him a letter of Mr. Ralston's on the subject, to write the Archbishop as follows:

"I received some days since a letter from Mr. Ralston, which I "enclose for your perusal. When considered, I would request you to "return it to me. Senator Stewart also has sent me a copy of your "recent letter to him, and his reply, with your rejoinder. I did not "apprise you of these papers, &c., sooner, or write on the subject, hoping "that the arrival of Easter and seasonable fine weather, would enable "you to fulfill your promise to look in on me, and talk over this ques- "tion of fees, which, in fact, ought to be settled without further delay, "and can better be discussed, *ore tenus*, and here, where are all the "papers, correspondence and books needed for reference. If you can "fix a day when it can thus be taken up by us, I will have the papers, "&c., on the table at the time you appoint, and be gratified to attend "to it, with you.

"If you cannot, I will, if desired, write you my ideas, though that "method is far more troublesome and less satisfactory than a personal "interview."

On Wednesday, April 29th, he acknowledged this letter, saying:

"I had intended to see you long before this, but I have been quite "unwell for the past five or six weeks. I went one day to the semin- "ary, fully intending to pay you a visit in the afternoon, but felt so "unwell that I judged it better to return to my own house. I leave on "Monday next for Chicago, to be absent about four weeks, and after "my return shall certainly make it my business to see you in Menlo.

"During my absence I wish you would put on paper your idea of "the question of fees, which will be more satisfactory, at least to me, "than a personal interview. I am most anxious to treat everybody "justly in this matter, and for that reason have sought advice from you "and Mr. Stewart. I have Mr. Stewart's opinion, but up to the pres- "ent you have declined to offer an opinion on the matter. As the ques- "tion must soon be decided, I should wish that on my arrival the in- "formation necessary to form a correct judgment may be in my posses- "sion.

"I am far from being well, and am so busy this week that I can- "not absent myself from the city. My principal object in going to "Chicago is to see my brother, who is quite ill, and see what can be "done for him."

On May 5th I wrote him as follows:

"In response to your suggestion of 25th ultimo, that I put on pa- "per my ideas as to the fees of counsel, in the Pious Fund case, I would "remind you that I did so quite fully on January 31st last, in a letter "of several pages, wherein I discussed the question at length. To that "letter I have had no reply beyond an acknowledgment of its receipt. "I refer to that letter for the circumstances which led to that of Mr. "Stewart and myself to you of November 15th, 1897. In it I endeav- "ored to intimate modestly to you my dissent from your apparent as- "sumption that the distribution of the fees contracted to Mr. Stewart "and myself rested in your discretion; but as your last letter indicates "that you still entertain that opinion, I must point out more clearly "the grounds and justice of my dissent from it. These, if submitted "to counsel, will, I believe, be found as valid in law as they are, I am "convinced, sound in morals and conscience.

"The history of our letter of November 15th, 1897, is given in "mine of January 31st, and need not be repeated. The object to be "attained was to arouse the United States Government to active steps "to obtain justice for us from Mexico. The power to employ counsel for "that purpose remained long unexercised by you, until about December, "1899, when Mr. Stewart sought to bring Mr. Ralston into the case, as "an associate. You were at the time away from home (in Europe, I "think), and I declined to recognize Mr. Ralston, as such, without your "approval. On your return I reported the matter to you, and after "canvassing it fully, I, with your approval, accepted him as an associ- "ate, and he took hold of the case, earnestly. It was he who succeeded "in securing the favorable attention of the State Department, the sub- "quent pressure on Mexico, and the final agreement to arbitrate—the "convention provided for which was also his work. Thus the object "for which the power to employ counsel was given to you was fully "accomplished, the power itself was exercised, by the acceptance of "Mr. Ralston, and the authority exhausted. Surely it can make no "difference whether the person who did this good service was thought "of by yourself, or suggested by another and approved by you; in "either case the end was accomplished and the power spent.

"I have a recent letter from the Senator, offering to abide by any "settlement of this matter I may make. Acting on this authority, I "must, in justice to him, and I do, withdraw the offer at the close of

" my letter of January 31st, to leave to your discretion the amount of " Mr. McEnerney's fee to be charged to us. And, speaking for both of " us, say that as the arbitration in Europe entailed expenses which " would not have attended one conducted here, we may fairly be asked " to contribute to them. They were indeed made unnecessarily large, " but it was all done in good faith and we are not disposed to cavil at " the same and will make our contribution liberal. The final payment " is due by Mexico within six weeks, and in the interest of all con- " cerned, all differences between ourselves, if such there be, should be " settled before then, and a united front presented to the Wilson litiga- " tion, which promises to be sufficiently troublesome anyway. You are " to be absent for a month, and no one can foresee the demands on your " immediate attention on your return. There is thus little chance of a " settlement of this business, if it is to be deferred till you come back. " If unadjusted on the 15th of June, we may all be drawn, most un- " seemly, into the Wilson suit, as parties interested, to the disgust of " you and me at least. These consequences of delay should be " avoided.

" Mr. McEnerney is here, and there can be no need of any inter- " mediary between him and me. Hence I suggest that you write him " requesting him to agree on the amount of his fee with me, which I " believe we can do in fifteen minutes' conversation.

" As to Mr. Descamps' fee, having never had any communication " with him myself, the settlement will probably devolve on you, and " will, with your permission, be made the subject of a separate letter."

Meantime the Archbishop had been corresponding with Senator Stewart, and asked the latter what fee he thought should be paid Mr. McEnerney. Mr. Stewart's answer had been received, wherein he named, as I am informed, $25,000 Mexican money, and the Archbishop had replied indicating his opinion that that sum was insufficient and that he would " be obliged to submit the matter to two able attorneys " who will (sift?) the case in all its bearings and suggest to me what " would be right and proper to award." As this correspondence does not lie in my personal knowledge, I leave it to be produced by Senator Stewart. Copies of it were sent me under date of April 2nd, and on May 12th the Senator telegraphed me that he could not come to California, and requesting me to call on Mr. McEnerney and settle his fee with him. I therefore wrote to Mr. McEnerney for an appointment, and we agreed to meet on Saturday, May 16th, at an hour fixed.

On the day named we met accordingly. I showed him Mr. Stewart's letter and two telegrams, after reading which I asked him to name what fee he thought he should receive. To my great surprise, he declined to name any sum, and refused if I should name an amount to express any opinion on it. He would not talk on the subject; said he had refused in like manner to talk of it with the Archbishop, and when I at last suggested that we should communicate our ideas on the subject to a common friend and ask him to give us his advice as to what we should agree on, the most he would do was to say he would "*com-* " *municate the suggestion to the Archbishop as coming from me!*" There was more conversation, but as I wrote the substance of it presently thereafter to the Archbishop in my letter of May 18th, I omit it

here for brevity. I returned from my interview with McEnerney not a little mystified by his refusal to consider or discuss the amount of his fee. The reason for such singular reticence was not very clear; as he was a man of thirty-seven years of age and had been a member of more than one legal partnership, the formation, &c., of which must have been preceded by the discussion of fees, division of profits, &c., the suggestion of youthful modesty was out of the question. It was of course possible that he had made himself "solid" with the Archbishop and was sure the latter would award him a larger fee than he would demand, or could even defend, for himself, and the ridiculous suggestion that if the Archbishop's award should be in his opinion too high, he was to be at liberty to mitigate it, pointed this way; but this thought was, in my opinion, so dishonorable to both the Archbishop and Mr. McEnerney that I dismiss it as out of the question. There remained but one other way of accounting for it, viz: that he designed to make a donation of his services to the Archbishop, as I believed he had done in many previous cases, and as the fee was to be taken from one friend, to be bestowed on another, he objected to take any part in fixing its amount.

I settled upon this last as the explanation of his conduct as the only one consistent with the honor of the Archbishop and Mr. McEnerney, and wrote Senator Stewart, May 30th, 1903, as follows: "It has "occurred to me as a conjectural explanation of McEnerney's refusal "to discuss his fee, with either the Archbishop or me, that he has prob- "ably been in the habit of charging the Archbishop nothing for his "services, and may intend to do the same thing now. If so he must "take no part in fixing the amount of it, but when fixed by others, "and the money offered to him, he may refuse to receive it. The ben- "efit would thus accrue to the client; *secus*, if he declined compensa- "tion from you or me." Still the position in which I was left was too false and ridiculous for endurance: at the age of eighty-three I was being treated like a child, by concert between a gentleman of sixty-one and a young associate of thirty-seven. This I would not endure. The Archbishop had had from the 15th of October preceding to reflect upon and determine what amount he would consider a proper fee for Mr. McEnerney, during most of which time he had been in easy communication with that gentleman, and although he assured me he was for several months anxious to discuss the matter, he had been so unsuccessful in doing so as to suggest the thought that he studiously avoided me. He was now absent and incommunicable.

Mr. McEnerney declined all discussion of the question with either of us, and the last day for Mexico's payment of the money was less than a month off. Under these circumstances, on May 18th, I wrote the Archbishop as follows:

"Some weeks since I received a letter from Senator Stewart, "dated April 2nd, enclosing copies of your correspondence with him "as to counsel fees in the Pious Fund case, and empowering me on his "part to agree on Mr. McEnerney's fee, &c., of which I enclose you a "copy. I took no action at the time, awaiting your promised visit on "the subject, but you went to Chicago without attending to it. On "May 12th I received from the Senator a telegram in the following "words, dated May 12th:

"'Impossible for me to go to California till September. Please "'call on Mr. McEnerney yourself, show him my letter of April 2nd, "'settle his fee. I am sure you and he can easily come to an agree-"'ment; important to settle before payment of award.' (The punctu-"ation is mine.)

"A day or two after I received from him another dispatch, as fol-"lows: 'You had better see and settle with McEnerney first; wire re-"'sult; letter might offend, as close friendship exists.'

"I supposed that the urgency here intimated had some connection "with the suit lately commenced in the District against you and others "by Wilson, of which I had heard incidentally. Hence I sought an "early appointment with Mr. McEnerney, and on Saturday morning "met him accordingly. I showed him Mr. Stewart's telegrams and "letter, and asked him to name his fee. To my surprise he would "neither name a sum himself, or remark on any I might name—de-"clined to discuss the subject at all; said he had declined to name a "sum to you, and persists in that determination. I pointed out that "if his fee was to be paid by Mr. Stewart and me, we, not you, were "the proper persons to agree on it, and argued, but was quite unable to "move him. I suggested at last that we should each impart (private-"ly, if preferred) to some common friend our respective ideas on the "subject, and ask him to recommend a settlement to us; not as an ar-"bitrator, but simply as the advice of a common friend. But he would "only consent to lay this suggestion before you, as coming from me. "I found he knew all about the Wilson suit, and he promised to let me "have a copy of the bill. He also mentioned to me, in the course of our "conversation, that you had told him that in the interview wherein "you secured my consent to the employment of Mr. McEnerney as "counsel in the case, I had asked you whether you had made any ar-"rangement with him as to his charges, and that you had replied in "the negative, saying that you had no occasion for such an arrange-"ment; that when the case was finished you would allocate to him so "much of the fee contracted to Mr. Stewart and myself as you thought "right, and that if he (Mr. M.) considered it too much, he could reduce "it! Extraordinary as this statement seems, I do not think there is "any doubt that I am reporting it correctly, for I asked him to repeat "it and he did so in the same terms. I told him of course that either "he had misunderstood you or you me, for no such conversation passed "between us, and I think I can satisfy you (if you so recollect our in-"terview) that your recollection is demonstrably erroneous.

"It appears, however, from all this, that Mr. Stewart and myself "are expected to pay fees to an amonnt to be determined by yourself, "with the aid of two gentlemen unknown to us" (referring to the Archbishop's letter to Stewart of March 13th), "and we cannot even "make an effort to agree on their amount with the person who is to "receive the money. Meantime you, to whom we are supposed to "have resigned the management and control of our business, have not "found time, in seven months, to attend to it, and now, at a time "when its settlement is deemed important, are absent and practically "incommunicable.

"I cannot consent to occupy a position so absurdly false, and do

" not suppose you would expect me to. As the simplest way out of it, " I revoke any power, promise or authority I may ever have given " you, or may be supposed to have given you, to determine for me, or " at my expense, the amount of fees to be paid, in the Pious Fund case, " to Mr. McEnerney, Mr. Descamps, or to anybody else, for services " therein. I will attend to my own interest and duty in that matter " myself.

"In my letter to you of January 31st last, I recalled the circum- " stances under which that of November 15th, 1897, was given by Mr. " Stewart and myself &c., saying, 'may I confess to you that from the " 'time Mr. Ralston came into the case and showed this activity and " 'vigor, it rather seemed to me as if our letter of November 15th, " '1897, was no longer in force; was, so to speak, *functus officio?*'

"As you do not appear to have apprehended the argument which " I meant thus to intimate, I will here express it more plainly. Our " letter of November 15th was given in order to empower you to em- " ploy some one who might be more successful in moving our Govern- " ment to action than we had been. On Mr. Stewart's nomination you " consented to taking Mr. Ralston as counsel, and he produced the pres- " sure on Mexico which led to her agreement to arbitrate. The desired " object then had been completely accomplished and the power given " for such accomplishment *had been successfully exercised and was* " *exhausted.* It may be suggested to you that the words of our letter " are broader than the intention above named. Very likely; but I am " speaking of its construction as between gentlemen and friends; hon- " orable men on both sides."

On Monday, June 1st, the Archbishop wrote as follows:

"I returned from Chicago on last Wednesday evening, and as I " have been quite unwell since, I have delayed until to-day to answer " your letter, though I instructed the Secretary to acknowledge its " receipt. I am now able to send a reply, which will be as brief as " possible. I wish, in the first place, to say that any disagreement or " controversy with you about the compensation to be made by me to " counsel engaged to aid in the conduct of the Pious Fund suit before " the court of arbitration would be exceedingly painful. I should wish " to see this great case of the Pious Fund ended, leaving all connected " with it in relations the most amicable and harmonious. I would pre- " fer to pay personally, if I were able or permitted to do it, the entire " amount of the compensation rather than that a controversy should " arise which would lead to an estrangement between you and me.

"Our relations for well nigh twenty years have been of such a " nature that no money could compensate either of us for changing " them. I am of the opinion that the matter in dispute, or which may " be in dispute, can be satisfactorily adjusted by referring it to some " outside party, or parties, whose decision shall be accepted by us as " final.

"If you will select five or six attorneys of San Francisco of well " known ability and distinction, and permit me to choose one of them, " I shall be satisfied with whatever decision he may render. Of course, " the one selected should receive suitable compensation for his services, " to be borne equally by you and me."

On June 2d I wrote the Archbishop in reply:

"I thank you very much for the kindly expressions in your letter " of yesterday, and assure you that I would deplore as much as possi- " ble anything that would lead to such estrangement as you speak of " but I deem any reference to third persons premature until we shall " have first ascertained and defined the actual difference between us, " and found that we cannot ourselves reconcile it. I assume Mr. Mc- " Enerney's reason for refusing to discuss the amount of his fee with " either you or me, to be one entirely consistent with his friendship for " both of us, and the honorableness of his own character; but as some " one must represent that side of the question in our discussion, I " suggest that you take that part, while I represent Mr. Stewart and " myself; and that we come without further preliminaries to the point " at once; for the question should be settled before the money is re- " ceived in Washington, or delay may draw us into the vortex of the " Wilson suit. If, therefore, you will name frankly what sum you " think should be charged to Mr. Stewart and myself for Mr. McEner- " ney's services at The Hague, and his expenses, I will promptly, and as " frankly, tell you in what respect, if any, I differ from you, and why. " I think we will thus be able to reach a sound conclusion, without the " need of anyone's assistance."

On the day after writing this letter (June 3rd, 1903), on coming down stairs from my chamber in the morning about 9.40 A. M., I was surprised to find the Archbishop waiting for me. He had stopped over, between trains, on his way from Santa Clara to San Francisco. He began, after the usual salutations, by expressing his distress at the porspect that this great case, after having been so honorably won, should end in a dispute and difficulty among ourselves about the fees; trusted we should reconcile all differences, &c. Much more of this general nature. I asked if he had received my letter of yesterday, and as he had not, I showed him the press copy of it, which he read. He spoke of arbitration and thought I must be able to select, from the lawyers in the city, some suitable person. I told him that the public and, to some extent, the professional mind here had become demoralized on the subject of lawyers' fees by the enormous salaries paid by the great corporations to standing counsel, and the monstrous fees said to be given to lawyers in certain probate and like cases, wherein estates of great magnitude were in dispute and the contradictory testimony pointed clearly to perjury on one side, and perhaps both; that opinion derived from such cases was wholly unsound, and they formed no standard for charges in a case like ours; that those enormous fees covered, or were believed to cover, services of a character which no honorable man could render, as fraud, subornation, and the sacrifice of all conscience and honor. Such were no guide for a case like ours, which involved only the application of recognized principles of law to known facts; *that the true standard for us was "what sums had heretofore been paid by the United States for similar services in like cases."* That the United States had had many such international arbitrations, some of them of great importance; that it was regarded as highly honorable to any professional man to be employed to defend the honor or the interest of his country before an international tribunal, and gentlemen

were proud so to serve without the temptation of the monstrous fees before referred to. "*Pulchrum est benefacere reipublicae; etiam benedicere haud absurdum est.*" I pointed out to him that I, who had conducted the case from the commencement to its conclusion, had to subscribe as "counsel for the prelates" while these gentlemen who came in only at the closing scene proudly wrote themselves down as "counsel for the United States." I mentioned to him, as the greatest arbitration in history, that between the United States and Great Britain, on the Alabama claims, referring to the eminence of the counsel employed, the great extent of their labors, the length of time consumed in their two visits to Europe, the great magnitude of the amount recovered ($15,500,000), and that their compensation had been fixed at ten thousand dollars each; and that *in greenbacks, worth at the time eighty-seven and a half cents on the dollar.*

The Archbishop enquired if I was sure of this amount and I referred him to Moore's International Arbitrations for it. He also enquired whether I was sure that Mr. McEnerney had appeared at The Hague as counsel for the United States, and I showed him at once the proof of it. I suggested consulting the State Department as to the fees usual in such cases. I even offered to allow Judge Penfield, the solicitor of the State Department, who must be familiar with the whole subject, who knew the case and the work of all the counsel and had attended court at The Hague and taken part in the argument, to name the fee. The Archbishop objected to this on the ground that he feared that the Judge was *too close to Ralston.* The Archbishop then, moving by the flank, proposed, by way of interrogatory, other gentlemen, as Mr. Olney, or Judge Seawell. I told him the high opinion I entertain of both those gentlemen, but said that while I was willing to let Judge Penfield fix the fee, it was because he knew all about the case, had made the same study of it that Mr. McEnerney had, and knew, or could learn, what had been paid heretofore for like services in similar cases, which another could not. As he was rejected, I went back to the absurdity of an arbitration without a defined claim. He said he was unable to define what should be paid, *because he had no knowledge of the subject, and Mr. McEnerney refused to make out a bill or speak on the subject.* We had of course a deal more talk of the matter, too long to be given here (though I have pretty full memoranda from which much of it could be supplied), and we parted with my promise to write to Mr. Stewart for his opinion, and to think over the matter further. He asked an explanation, and I gave it, of how we might be drawn into the vortex of the Wilson suit, and I told him that if he had to resort to a legal settlement I preferred it should be in Washington. After the departure of the Archbishop, I telegraphed the occurrence to Mr. Stewart, and wrote to Judge Seawell, as related in my note of the following day to the Archbishop.

On June 4th I wrote the Archbishop as follows:

" I yesterday telegraphed to Senator Stewart your suggestion, and " to expedite matters, if possible, wrote Judge Seawell as follows:

" ' My Dear Sir—A difference has just arisen between old and " ' close friends as to the fee to be paid to one of them—a gentleman of

" 'our profession—for services. He absolutely refuses to name or in-
" 'timate any sum, or even talk on the subject, leaving the amount to
" 'be determined by the others. The position is very delicate and they
" 'prefer to confide the matter to some impartial person in whom all
" 'have confidence. In this embarrassment a proposal has been made
" 'that the whole matter be left to your determination, as arbitrator.
" 'It will require, probably, a couple of days of your time, and perhaps
" 'couple of hours of oral explanations or introduction; the examina-
" 'tion will be of printed papers only. You are of course to be paid for
" 'your services a respectable sum. The third party, whose assent
" 'would be necessary, has been telegraphed to and his answer may be
" 'expected to-morrow. Meantime I write to inquire whether you are
" 'able and willing to take the matter up at once (for dispatch is im-
" 'portant), and give your judgment on it. You understand that the
" 'parties are all good friends, and earnestly desire to remain such; and
" 'for that purpose to have the thing determined by the judgment of
" 'one in whom they all have confidence, and one who is quite disin-
" 'terested. Your immediate reply will oblige all parties, including
" 'Yours very truly, JOHN T. DOYLE.'

"Reflection, however, confirms my conviction that a pecuniary
" demand which is undefined cannot be the subject of arbitration;
" until a sum is named we do not know what is in controversy, or
" whether anything is. It will, therefore, be necessary, before we
" attempt an arbitration, that the amount demanded for Mr. McEn-
" erney be defined. If you are unable to do it, better get some
" friend to do it for you. Until that is done, the most we can do
" is to ask the advice of a friend as to what we should offer. This
" indeed might be as good a way as any other to reach a settlement,
" and it is one I have often known to succeed well. I will therefore
" modify my suggestion in that way; that we ask the advice of the
" Department on the subject, and we can also take that of the Judge.
" When I named Judge Penfield yesterday I should have said the of-
" ficer, whoever he is, who has charge of those matters in the Depart-
" ment. They have, in that office, standards and an experience of
" their own unknown to us; and as to any influence of Ralston, I
" omitted to tell you that he is away in Caracas, where he is acting
" as umpire in one of the many Venezuelan arbitrations, and incom-
" municable."

On June 5th the Archbishop wrote me as follows:

"Your letter of yesterday just received. In answer I beg leave to
" say that no one connected with the Department in Washington
" should be called in to settle the matter, when it can be done in much
" less time and just as well at home. If Judge Seawell accedes to your
" request, we can have a decision within three or four days; should it
" go to Washington, it might take a month before an answer is re-
" turned."

On the following day (June 6th) I wrote him in reply:

"You appear to have misapprehended my letter of Thursday; I
" had offered to leave the determination of the fee to Judge Penfield
" because he knew all the facts and occurrences, and either knew, or

" could learn what fees had been heretofore paid for like services in " similar cases, which is, I think, the standard. You expressed an ob- " jection to this proposition which I consider equivalent to a rejection " of it. In my letter of Thursday I intended, while rejecting the sug- " gestion of submission to arbitration of a controversy as yet undefined, " to propose that we lay the matter before Judge Seawell for his advice " as to what sum we should offer Mr. McEnerney, and do the same " with the State Department, and get their advice also. I do not " make this a condition of consulting the Judge, but if you decline to " unite in the request for the opinion of officers who have the familiar- " ity of forty or fifty such cases, I shall endeavor to get their opinion " myself. I wrote some days ago to ascertain what fee the Govern- " ment had paid Mr. Ralston in this case, as that would afford some " light on the matter; but learned in reply that the Secretary in " appointing him exacted a stipulation from him that he should make " no charge. As the expenses were to fall on the claimants, this looks " much more like a desire to protect your interest than to favor him. " I regard the submission of a demand of which the amount is entirely " undefined as an act of more folly, and out of the question. Your " second letter to Mr. Stewart shows that you have definite ideas of " the amount of this claim. If you will state what your idea is I will " promptly tell you mine, and my reasons. After that it will be in " order to consider the question of arbitration. Judge Seawell can give " us any day after Monday next during the coming week.

" You will recollect that I foresaw the desirableness of settling " this matter at an early date, and called your attention to it several " months since. Unfortunately you were unable to find time to attend " to it. I mention this only to show that, if any unpleasant results " attend it, the fault cannot be laid at my door. I still have hope " that you will accede to my last suggestion, viz: that we take the " opinion of both Judge and the State Department on the subject, and " then, giving to each its due weight, endeavor to agree. I believe we " shall be easily able to do so. The opinion of the Department can " be telegraphed here in season. I see no other way out of the dead- " lock."

On June 8th the Archbishop replied: "Your letter of the 6th " instant, with special delivery stamp, was delivered, at the Cathedral " residence, Saturday evening, but as the porter did not think it of " great importance he kept it until I came to my office. I have read " it carefully. The last sentence is the important one which should " have its answer immediately. It is as follows: 'I still have hope " that you will accede to my last suggestion, viz: that we take the " opinion of both Judge [I suppose you mean Judge Seawell] and " the State Department on the subject, and then giving to each its " due weight endeavor to agree. I believe we shall be easily able " to. The opinion of the Department can be telegraphed here in sea- " son. I see no other way out of the deadlock.' To this sentence I " answer as follows: I have no objection that the opinion of both " Judge Seawell and the State Department be taken. When received " we may be able to reach an agreement. If not the matter can be " *left to the decision of Judge Seawell.*"

I think it was after the receipt of this letter that it struck me that the Archbishop had somewhat eccentric notions on arbitration; in all his proposals *he was to choose the arbitrator*. His first was that I name so many persons, from whom he would select one. That not being accepted he named an arbitrator to whom he wanted my consent; and here in this letter he agrees to consult two persons, one named by each, and *if they differed the gentleman named by him was to decide*. Without attaching much importance to it I could not help thinking it peculiar. I answered him on the same day, congratulating him on *progress* and promising to prepare, with all possible dispatch, a memorandum of the necessary facts, to be shown to the gentlemen referred to, and pass it to him for correction, if deemed to need such.

On the following day (June 9th) I sent him the statement of facts I proposed, with the following letter: "I enclose a statement of our "question, which please read: if you desire anything in the way of "correction or supplement, be good enough to have it typed, and send "me a carbon of it; sign and send it to Judge Seawell at the City "Hall. I will send him my ideas on the question as speedily as I can "commit them to paper, and will give you a copy. Please do the same "for me, as to yours.

"I notice that you say in your last letter that if we do not reach "an agreement the matter can then be left to Judge Seawell. Of "course *it can*, but do not understand me as agreeing that it shall. "I do not propose ever to arbitrate an unknown question. I think it "would be right to agree at once on the sum to be paid the Judge for "the trouble we are giving him, and, if satisfactory to you, would pro- "pose two hundred and fifty dollars, half to be paid by the prelates "and half by Mr. Stewart and myself. I feel rather hurried in this "matter, because a paragraph in yesterday's papers suggests that Mr. "Stewart may be in some financial trouble, and I want to be able to "telegraph progress to him. For this purpose please let me know by "telephone as soon as possible what you have done about it."

The statement accompanying the foregoing letter covered six and a half pages of letter paper, typewritten. I have a separate copy of it for use if needed. It will be found full and complete. I challenge criticism on it. I allowed the Archbishop to add to it at his discretion. On the 13th of the month I received the following from the Archbishop:

"I received your letter dated Menlo, June 9th, enclosing a state- "ment of our question, which you asked me to read and add anything "in the way of correction which I might deem necessary. You also "asked me to sign it and send it to Judge Seawell at the City Hall. "I have been so unwell since your letter reached me as not to be able "to give it any attention. I read it last evening and then again this "morning and return it with the following observations:

"First—I do not think that I should be asked to sign this paper, "which, in my judgment, does not contain a full exposition of my side "of the question; for instance, in all that relates to my going to New "York, in order to engage the services of an attorney or attorneys, you "omitted the fact that I went at the express wish of Secretary Hay.

"who impressed on me the necessity of selecting counsel of ability to "argue the case before the international tribunal at The Hague, and "who suggested the names of two attorneys there, either of whom "would be satisfactory to him, Mr. Frederick Coudert and Mr. John "Bassett Moore, about whom you yourself wrote to Mr. Abraham "Hewitt.

"Secondly—I acted in this matter of the selection of an attorney "under the authority given me by the joint letter signed by yourself "and Senator Stewart. I always supposed that I had authority to se- "lect additional counsel, and now for the first time I find in your let- "ter that you do not admit this right.

"Thirdly—In view of all this it is better not to refer the matter to "any one for suggestion as to how much should be paid to Mr. McEn- "erney for his services, but to have me name the sum which I intend "to give him, and if that sum is found to be exorbitant, the difference "that may arise can be settled definitely in some other way. I foresee "that we shall have to go over all this matter again before some one "having authority from both of us to decide the matter, and hence it "is useless to do now without reaching a conclusion which we shall "have to do a second time in order to reach a conclusion.

"Fourth—I propose to pay Mr. McEnerney $10,000, in United "States gold coin, for his services, and $1500 to defray his expenses."

Both the Archbishop's excuses for declining to either accept the statement or correct it were so frivolous and absurd that this letter looked a good deal more like a mere backing out of the agreement to consult friends, which we had made a day or two before. It was evidently written, too, under the "advice of counsel," and the latter part of it written by counsel. Though somewhat shaken by these things, I still had such confidence in the frankness and ample good faith of the Archbishop and Mr. McEnerney that, although I was unable to settle in my own mind who the legal adviser was, it did not cross my mind that it could possibly be Mr. McEnerney. I even began a letter to the Archbishop urging him to remind or inform *his new adviser* of certain things that made it important we should avoid a controversy, but left it unfinished, as useless. I did not, however, despair of reaching a settlement, and on June 15th replied to the last letter as follows:

"I received yesterday your letter of the 12th inst., and am grati- "fied to get a definition of the amount claimed for Mr. McEnerney. "As to the $1500 for expenses, travel, &c., you know all about it from "experience, and I know nothing, therefore I accept your figures. As "to the fee, for which you think ten thousand dollars the proper sum, "I think it should be estimated at five thousand. I will tell you my "reasons for this further on. But meantime it reduces the amount in "dispute between us to five thousand dollars, and if with ample time "for the purpose, you and I cannot arrive at a settlement of that, I "shall be very much disappointed, and think we are not as competent "men as we are supposed to be. I am satisfied that we can and will. "As to the statement to be used for the advice of friends, which you "return unsigned, you must have failed to notice that the last para- "graph provided for anything further from you which you might "deem needful to correct or complete it. I shall type the matter

" which you deem needful to complete it from your letter, and enclose " it. Please sign and return it (correcting if necessary) and I will " have the necessary copies made for Judge Seawell and the Depart- " ment. The Judge tells me that he will go to the country July first. " I presume you will receive the Mexican payment this week; you can, " of course, hold back out of our part sufficient to cover what you feel " called on to pay, for the account of Mr. Stewart and myself, and " send us the remainder: Mr. Stewart's portion as he has directed, and " mine by check to my order. If convenient, I would like it to be " accompanied by an account, such as Archbishop Alemany always " sent with his annual remittance.

On June 16th the Archbishop wrote me (this letter is *misdated July* instead of June) as follows: " I am in receipt of your letter with " the enclosed document, which I return. I do not see any use in con- " sulting the Department about the fee to be paid Mr. McEnerney. I " have no objection that Judge Seawell be consulted, but would remark " that if his suggestion as to the amount is not accepted by us, then he " is debarred from any further connection with the case, and we shall " have the trouble of selecting another arbitrator, and of paying an- " other fee.

" Considering the time which Mr. McEnerney took from his busi- " ness in this city, which was rather lucrative, I could not think of of- " fering him less than the amount mentioned in my last letter. I put " the figure down as low as I possibly could, in honor, and while I am " willing that it should be submitted to outside parties, in case of a " disagreement between us, I hardly think that a suggestion would " have sufficient force to make me change my mind. However, if you " think that a suggestion from Judge Seawell, without any binding " character to it, will help in coming to an agreement, I am satisfied " that the matter should be referred to him to receive his advice only. " However, before the Judge makes any suggestion I shall insist on " having a half hour or an hour's oral conversation with him. I am " too unwell to sit down and write, or even dictate all that I could say " on this subject. I think it better that you should make out your " case independently of mine. There are too many matters irrelevant " to the case in this enclosed document, and there are some matters of " a personal nature, such as that I grew nervous, that have absolutely " no bearing on the case. If I remember correctly, and my memory is " quite accurate, you were the person who was most fearful that there " was not sufficient time to prepare the case properly for the tribu- " nal. It seems to me that I should not be asked to sign a docu- " ment containing all these matters. I will therefore make out as " soon as I possibly can a short statement, a copy of which will be " sent to you, and a copy to Judge Seawell. You to do the same for " your side of the question. I must have a short interview with " Judge Seawell in the way of explanation, the same privilege to be " given to you."

The Archbishop's memory is sadly imperfect, and at this point it fails him entirely So far as to being fearful, &c., as stated by him, I always felt and tried to inspire him with confidence in the result before any impartial tribunal. I even went so far when he was especially

frightened as to tell him very emphatically that the case *could not be lost.* What I did feel and express apprehension of was that Mexico might fail to make, seasonably, the discovery we had demanded of her as to the prices obtained for the "Cienega del Pastor," and some minor properties, which, though not essential, I desired to have in support of the second alternative presented in our memorial. Perhaps it was owing to the same defect of memory that he omitted to fulfill his promise to prepare a statement himself, though his subsequent might make some uncharitable persons think that he never intended to do so.

On June 17th I answered as follows:

"This morning's mail brings me your letter of yesterday, saying "that you see no use in consulting the Department about the fees to "be paid to Mr. McEnerney, but I have no objection that Judge Sea- "well being consulted, &c. I am not sure that I understand correctly "the sense in which this is intended; therefore, if it means that you ab- "solutely retire from our agreement, assented to by you on the 8th in- "stant, that we should consult both the Department and Judge Seawell, "on the strength of which I prepared the statement sent you on the "12th, please let me know the fact, that I may at once apprise Mr. "Stewart of this change of front. I can scarce think that you mean "to say that you will not even hear what the Department thinks about "the question before us, wherein it has had such large experience, nor "how I am to account to Mr. S. for your agreeing on the 8th of the "month, and after the statement had been made and amended to con- "form to your own words, your refusing to do so on the 16th.

"When we had a law in this State forbidding a negro to be a "witness where a white man was a party, I heard a learned judge "talking of the subject say, 'for my part, if I thought a dog could "'speak and testify I would hear him; something might be learned, "'and nothing could be lost by listening even to a dog.' Our modern "legislation is all based on this theory, which has been in fact gener- "ally if not universally adopted. I beg you to give me at once your "definite answer, that I may report to Mr. Stewart."

On June 18th the Archbishop telephoned "no objection consult- "ing the department."

On the same day (June 18th) I wrote him as follows (misdated 17th): "I received yesterday three long telegrams from Washington, "the text of which I am sorry I cannot give you, and this morning I "have your reply by telephone to my letter of the 17th instant. But "we have not time for further *pourparlers*, and, if we are to reach a "conclusion at all, must do it without further delay. Your naming a "sum for Mr. McEnerney's fee removes my objection to arbitrating an "undefined issue, and I have drawn an agreement to submit our dif- "ferences to Judge Seawell as arbitrator, making his decision final. "It is not in the usual form with a penal bond, but is valid and covers all "the points intelligibly, I believe. I send to the city with this, by my "son, John, one copy of it, signed by myself, and he will have another "copy made there for your signature. He will also learn from the "Judge what time he will require for his decision, and fill the blank, "with your approval, accordingly. He will receive your answer at "once or call for it later, as you may desire, and also arrange with the

"Judge for his call on you and me, as proposed. I hope you will be "able to sign this for yourself and the Bishop of Monterey, and if "signed, he will so telegraph to Washington.

"I sincerely hope that we may thus end the only unpleasant oc- "currence that has happened in the New Pious Fund Case since we "signed our contract in December, 1889, and leave only pleasant rem- "iniscences behind."

That letter I sent to the city on the afternoon of the 18th by my son, who carried also a copy of the arbitration agreement, signed by me, in which there was a blank for the time within which a decision should be made. On arriving he went at once, as he reported to me, to Judge Seawell's house, saw him, and by his direction filled this blank with the words *thirty days*. He then called on the Archbishop, and presented him the said form of agreement and my letter. *He declined to read the agreement or open the letter then, though pressed to do so, and the substance of them was related to him.* He refused, making excuses, as I am informed, as that he was not very well; would read it in the morning; why must this thing be hurried so? he wanted to go away for a few days to recuperate, would not go more than four hours' distance, and as soon as he received a telephone that the money was received here, he would return and distribute it! As he positively refused to read the proposed agreement or open my letter, my messenger came away, leaving him a telephone address by which to call him in the morning if wanted.

This, of course, made it clear that he would do nothing save under the advice of his new professional adviser, and that he feared to even read a paper relating to the matter, lest he might say or do some rashness, unadvisedly. Now down to this time I had invariably communicated to the Archbishop everything I learned or wrote or heard about our case, sending him copies of all papers. I had absolutely no secret from him about it, and his manner and conversation warranted me in supposing that he was equally frank with me. This practice I adopted several years ago in order that he might have a complete file of all papers, doings and correspondence in the case, and thus be enabled, if anything befell me, to put any counsel employed in my place into possession of every fact and circumstance connected with it, as fully as possible. I informed the Archbishop of this intention, and lived up to it. Here, however, I found my position altered; Mr. Stewart had constituted himself my client with respect to this question of the charge against us for Mr. McEnerney's services, and I had no right to communicate to anyone *what he said to me*. I felt that the withholding of it, without reason assigned, would be a departure from our line of intercourse of a dozen years, and therefore wrote him as above, "*I* "*have received telegraphs from Mr. Stewart, which I am sorry I* "*cannot give you the text of.*" I did, however, feel at liberty to let him see the text of my reply to those messages, and my son showed it to him, as he informs me; from it he could see that *I had declined to allow my name to be used as a plaintiff in a suit against him, and was at liberty to infer that I had been so invited.* On the following morning my son was told by the Archbishop's secretary that he would write me by mail, and in fact on the following day I received

the following letter from the Archbishop. It is not written on his usual paper, nor even on letter paper of any sort, but on foolscap. It was evidently prepared in a lawyer's office and sent to him for his signature. It bears date June 19, 1903, and reads as follows:

"I have examined the agreement which you sent me last evening " to submit the matter of Mr. McEnerney's fee to Judge Seawell. I " have not signed it, nor shall I, for the following reasons:

"First: I have informed Mr. McEnerney that you and Mr. Stew- " art suggest $5,000 (besides expenses) for his fee, and that I, on the " other hand, have suggested that he be paid $10,000. Mr. McEnerney " is willing to accept the $10,000, and be satisfied with it. He tells me " however, that he is not satisfied to have me arbitrate the amount of " his fee, with a $10,000 limit. He considers that he may reasonably " expect to be awarded $20,000 in an arbitration. He is entirely satisfied " to accept Judge Seawell's award, whatever it may be, but will be dis- " satisfied with an arbitration where Judge Seawell is limited to a fee " of $10,000. I placed Mr. McEnerney's fee at $10,000, considering " that the lowest sum which could be offered in justice. In fact I had " intended to pay him an additional sum if he felt the amount allotted " was too small. My purpose for a long time has been to fix his fee " at $15,000, which I would consider just. I am, therefore, of the " opinion that his position is a reasonable one, and that, if the matter " is referred to Judge Seawell, no limit should be put upon the amount " which he is at liberty to award. He should be permitted to award " any sum which he considers to be fair, and his decision should be " final. If the matter is submitted to Judge Seawell, Mr. McEnerney " should be invited and permitted to take part in the proceedings.

Second: I have received the account of the State Department, " and I think that there are some items there which should be charged " against you and Senator Stewart. For that reason, if for no other, " I should decline to sign any agreement which included the first para- " graph of the second page. 'This agreement is made on the under- " 'standing and condition that after deducting and holding back sixteen " 'thousand seven hundred and fifty dollars from one-fourth of the net " 'sum collected by the United States from Mexico under the award, as " 'turned into U. S. gold in Washington, less the expenses charged to " 'the claimants by the Government, the residue of twenty-five per cent " 'thereof shall be immediately, on receipt of money from the Govern- " 'ment, distributed to Messrs. Stewart and Doyle, one-half to each; " 'Senator Stewart's portion to be paid as he has already directed or may " 'direct, and that of Mr. Doyle to be paid by check to his order.' But if " these expenses were adjusted and out of the way I would still decline to " sign an agreement with that clause contained therein for the reason " that I do not understand what its object is. If you mean by this clause " in the contract to invite me to promise that I will do anything " which I have agreed to do, I answer that it is unnecessary. What is " the purpose of this paragraph?

"Third: I understand the $16,750 referred to in that paragraph " to consist of ten thousand dollars to cover Mr. McEnerney's fee, $5000 " to cover Senator Descamps', $1500 to cover Mr. McEnerney's ex- " penses, and $250 to cover my half of the *honorarium*.

"Fourth: I will not burden myself with an agreement that the "matter shall be confidential. I have no desire to give it publicity. I "shall not speak of the matter unless I have occasion to do so.

"Mr. McEnerney has handed to me to-day a telegram received by "him from Senator Stewart and his reply thereto which I enclose."

I immediately wrote the Archbishop under date of June 20th:

"Acknowledging your letter of yesterday, I have only time at this "moment to say that I could not make such a radical change as you "suggest without consulting Senator Stewart. Meantime, in order "to make some progress, will you please send me a copy of the "account received from the State Department, and designate the "items that you think should be charged to Mr. Stewart and myself? "Not having heard of such an account or items, I could not, of course, "have made any reference to them. I think, too, that as you propose "to change so radically the agreement to arbitrate, you should cause "to be prepared and let me have what you would propose to have "signed, in place of mine which you reject. There is more I would "like to say in reply to your note, but must close this here to catch "the mail."

On Monday, June 22nd, I wrote him again, in continuation:

"I wrote you on Saturday a very hurried and imperfect reply to "your letter of the day before. To conclude my answer, and reply "to your enquiry on the subject, I have to say that the purpose, or "rather my reason for inserting the paragraph conditioning the pro-"posed agreement on immediate payment of the residue of the twenty-"five per cent, was that it appeared to me that Mr. Stewart was in "very urgent need of cash, and meant to arbitrate only on condi-"tion of very prompt payment of all that was conceded to belong "to him; hence I put it in the contract, and it was, *of course*, to "make it applicable to both of us, as there was no reason for dis-"crimination.

"My reason for the confidential clause was simply that any dif-"ference between us might be magnified into a church scandal, which "I supposed undesirable. So far as I am concerned, I do not care; "my life here has been an open book for about half a century; I "have done nothing to be ashamed of and do not expect to, in the "short time left me. I have never paid a cent of hush-money or black-"mail and never will.

"Of course I regard my connection with Mr. Stewart's interests in "the Pious Fund case as closed, for which I am in no way sorry, as "they have given me much trouble. You have of course seen in the "papers the ill fortune of his daughter, &c., and can understand why "he should want ready money, which I hope he will now get, in sea-"son to be of service to him."

I have transcribed my letter correspondence above, consecutively, for convenience; but there was also going on during the latter part of the time covered by it another correspondence, by telegraph, which should be read in the same connection.

On June 16th Senator Stewart telegraphed me:

"Award paid Clayton Saturday; Government finding difficulty in "securing New York exchange. Hopes to accomplish it to-day or to-"morrow."

On June 17th Mr. Stewart telegraphed me as follows:

"Have telegraphed McEnerney as follows: 'Mexico paid award
" 'to Ambassador Clayton; some difficulty in securing exchange, but
" 'State Department will receive amount in few days. I appeal to
" 'you to have your fee adjusted, so that the money can be distributed
" 'at once. Please telegraph answer. Stewart.' We have decided
" that if there is to be litigation it shall be here and at once. Shall
" we use your name as plaintiff? W. M. Stewart."

On June 18th I telegraphed Mr. Stewart:

"Fifteen hundred traveling expenses agreed on; for fee, Arch-
" bishop demands ten thousand; I five. This difference I propose to
" submit to Seawell's arbitration, the rest of twenty-five per cent.,
" after holding back seventeen thousand for suspended fees and ex-
" penses, to be promptly distributed. If this fails, I shall abandon
" effort. Do not make me plaintiff."

On June 19th Stewart telegraphed me:

"Arrangement in your dispatch satisfactory. Have Archbishop
" direct Secretary of State to pay into Citizens' National Bank, Wash-
" ington, as per letter to him, one-half twenty-five per centum after
" deducting eighty-five hundred dollars, in conformity with your set-
" tlement."

On June 19th McEnerney telegraphed Stewart:

"I am more than surprised that you and Mr. Doyle consider five
" thousand dollars a fair fee for me. I consider twenty thousand dol-
" lars reasonable. I would not hesitate to charge that sum for similar
" services, even if the fee were not contingent, as this was. The Arch-
" bishop has stated to Mr. Doyle that he will allot me ten thousand
" dollars and expenses. Mr. Doyle has agreed to the amount of ex-
" penses, and now desires to refer to Judge Seawell, as arbitrator, the
" question of what sum I shall have, between five and ten thousand
" dollars. For the sake of peace and because I do not consider that
" money is worth a quarrel for it, and without any belief that the
" amount is adequate or fair, I am willing to accept the ten thousand
" dollars, but not after arbitration. I have asked the Archbishop to
" not arbitrate the question in that form. I am willing that my fee
" shall be fixed by Judge Seawell, but not if he is bound to fix it be-
" tween five and ten thousand. I shall insist that he shall award me
" whatever he considers to be just, whether it exceed ten thousand or
" fall below five thousand dollars."

On June 20th Mr. Stewart telegraphed me:

"Have sent following to McEnerney in answer to long dispatch
" agreeing to take ten and protesting against arbitration. 'So far as
" 'Ralston and I are concerned a fee of ten thousand dollars to you is
" 'satisfactory without arbitration. We are also willing that the re-
" 'maining seven thousand dollars shall be used by Archbishop to pay
" 'other attornies' fees and expenses. When Archbishop directs deposit
" 'in Citizens National Bank, Washington, as requested in my letter to
" 'him of May 18th, he may deduct eighty-five hundred dollars from
" 'our half of twenty-five per centum, as our contribution to this set-
" 'tlement. That will entirely close transaction so far as we are con-
" 'cerned.'"

On the evening of June 19th I had written the Senator relating my son's going to the city, as mentioned above, and conjecturing that nothing would come of it, saying, *inter alia*, of the Archbishop:

"All things tend to persuade me that he is consulting with some "lawyer, (who cannot, I think, be McEnerney.) who wants a quarrel, or "is too timid, to do business. He says he is going for three or four days "to the country, but will be within reach, and as soon as he learns "from Archbishop Montgomery that the money has been paid, will "distribute it; that is as reported by my son; but obstacles and im-"pediments are easily found, and he evidently does not want to expe-"dite things or he would explain his objections to John, who could "communicate with me by telephone, and if capable of remedy they "could be remedied. John will wait in the city till the last moment "to get the Archbishop's letter and bring it here to-night, in person; "*but I judge it will be mailed, for delay.*" Altogether I expect to "telegraph you to-night that I despair of an agreement and give up "the effort."

On the following day, June 20th, I telegraphed him:

"I abandon all hope of arbitration at present. Believing they "have been amusing me, to gain time and collect money, I will now "amuse them and perhaps learn something."

On June 22nd Mr. Stewart telegraphed me:

"Have to-day telegraphed Archbishop substance of my telegram "to McEnerney. We regard transaction as closed; think best you do "the same."

Here the telegraphic correspondence was suspended, and I resume my narrative. It appears, however, that further despatches passed between Mr. Stewart and the Archbishop, from which the Senator came to the same conclusion that I had reached, viz: that they were trifling with him to gain time and get the whole award into the Archbishop's hands, when they would bring forward other claims till then unheard of; and this led to Mr. Stewart's despatch accusing the Bishop of "want of frankness." Mr. Stewart can detail all this better than I.

The Archbishop's letter of June 19th was, to me, a surprise and a painful revelation, for it showed me two persons, believed to be my friends, false to that character and in secret combination against me. The Archbishop had written me that Mr. McEnerney had declined to speak with him on the subject of his fee just as he had with me. We had been corresponding about it on the basis of the truth of that supposition; for some time back his letters had evidently been framed by counsel, and while I remained perplexed to conjecture who this new adviser was, it now came out that it was no other than Mr. McEnerney himself! I will not pause to characterize this proceeding nor to contrast it with the Archbishop's letter of the first of the month, so gushing with fine sentiments; but only say that it opened my eyes to things, which, had I been dealing with one of a different class, or even with a stranger, I might have suspected before; but of which, dealing with an Archbishop—a disinterested, sincere and candid gentleman, punctiliously honorable and truthful—one who would have preferred to pay out of his own pocket the whole sum in dispute (if he had wherewith), rather than see a difference arise about it, I could not en-

tertain the thought; and even if *he* had been less shielded from suspicion, the high opinion I entertained of Mr. McEnerney would have forbidden me to harbor such a thought of him. But here they stood revealed in their true colors; the one having received from me, in my excessive confidence in his honor, probity and sense of duty, a power from which he claimed to derive authority to employ counsel, at my expense, *for any purpose he might think proper in connection with the Pious Fund demand*, instead of studying to economize my outlay, *as he was in duty bound (for he was but an agent expending his principal's money)*, secretly combined with the other, whom he had taken abroad with him, in the humble capacity above shown, to elevate that lowly service to the higher level of professional employment, and thus wring from his confiding principal, under the pretence of important professional services, a monstrous fee—*double that paid for identical services to five eminent gentlemen, each infinitely his superior in every respect*, and both of them for the purpose of carrying out this design, leaving me under the belief—created by their own explicit declarations—that the physiognomist-lawyer had no connection with fixing the amount of the fee claimed for him, and that from delicacy he persistently refused to speak of it with either party! This may be candor, frankness, or anything else praiseworthy or honorable the Archbishop may choose to call it *in his terminology*, but in the estimate of honorable laymen—the class, confidence in whose truthfulness and virtue holds society together, it will not, in my opinion, be so regarded.

Thus the effort to arbitrate the sum we should allow for Mr. McEnerney's "services" fell through, and it became evident to me that I had been trifled with all through the correspondence about it merely to gain time and get the money into the Archbishop's hands and then draw some new claims on us, and was correspondingly disgusted. I believe nothing further material passed between either of the opposing parties and myself until the 10th of September, when I wrote the Archbishop as follows:

"Most reverend archbishop:—I learn that you have received "your Pious Fund money, and to close that business, it only remains "to settle the lawyer's fees. I therefore make my earnest and final "appeal to you for a serious and hearty effort to settle amicably this "source of controversy, which is otherwise sure to be productive of "evil. No such effort has yet been made, except Mr. Stewart's tele- "graphic attempt, and my vain endeavor to induce Mr. McEnerney to "discuss his fee. Having repelled that, it may not, perhaps, be agree- "able to him to discuss the matter with me; but is intercourse between "you and me also forbidden? If it is, cannot some third person be "made use of?

"To drift into a legal controversy over this business,—especially "into an angry and recriminative one—as this is likely to become *if* "*we drift* into it—will be a shame, and discreditable to some one.

"Had you kept any one of the many appointments you made to "come here and discuss this subject, between your return from Europe "and your departure for Chicago, we would certainly have come to a "settlement of or found a mode of settling the fees of Messrs. McEn-

"erney and Descamps. Of that I have no doubt whatever. Your "telegraph of August 11 to the Secretary that $30,000 would not "cover the amounts in dispute indicate that you propose, or have been "advised to make other claims of great magnitude, never intimated to "me, and which you foresee will be disputed. I know not what they "are, but whatever they may be there must be some way of settling "them amicably if both parties so desire. Shall we not at least try?

"Yours in all charity, JOHN T. DOYLE."

On Tuesday, September 15th, the Archbishop wrote me seemingly in reply to the above:

"My Dear Mr. Doyle: I hope to have my answer to your letter "ready by to-morrow evening or Thursday morning. I have been very "busy since Sunday, and not very well.

"Sincerely yours, P. W. RIORDAN."

Under date of Thursday, the 17th of the same month, he sent me the following, evidently the production of Mr. McEnerney, except possibly three or four sentences, of mere professions, near the commencement, which may be his own:

"I was pleased to receive your letter of the 10th instant, which "is the first letter I have had from you since your letter of July 22nd "last.

"I received on last Thursday from the Secretary of State $377,- "253.97. This sum is made up as follows:

"Amount received from San Francisco Mint	$605,688.65
"Proceeds of payment of February 2, 1903	16,416.01
"Total received by Government	$622,104.66
"Expenses of arbitration deducted	$ 32,859.66
"Amount withheld to cover the claims of Senator Stewart, "yourself and Phillips and Wilson	211,991.03
"Received by me	377,253.97
	$622,104.66
"I have paid Mr. McEnerney	11,500.00
"and to Chevalier Descamps	5,000.00

"This I have done under the agreement of November 15th, 1897, "and I expect to deduct those sums from the amounts which are due "to you and Senator Stewart.

"I very much appreciate your desire to settle the matter of coun- "sel fees amicably and shall do everything that I can to co-operate "with you to that end. I do not understand that the intercourse "between you and Mr. McEnerney is forbidden, and intercourse "between you and me is certainly not forbidden. I do not desire the "matters in difference between us to drift into or constitute a legal "controversy. I desire to settle the matters between yourself and "Senator Stewart on the one hand, and myself, justly and without "any anger or recrimination whatever. It is needless to say to you "that I have no personal interest whatever (to the extent of a dollar)

" in the Pious Fund. My duty in respect to the moneys collected for " the account of the Pious Fund are simply that of disbursement and " application to the uses for which the fund was created. If you and " Senator Stewart differ with me as to what your rights are it should " be possible for us to settle it without any anger or recrimination. " The mere fact that we differ is no occasion for either one or the other. " The fact that I do not hold the same view that you do does not imply " any impeachment upon my part of your good faith. Whatever your " rights are you are entitled to. If we differ we must find a way of " settling matters. It is true that I did telegraph the Secretary that " $30,000 did not cover the amounts in dispute. I wrote to the Secre- " tary of State that I will give him a full and precise statement of my " position with respect to the rights of yourself and Senator Stewart. " To that end it is necessary that I should have some information from " you which I would be pleased to have you give me.

" 1. In a communication dated Washington, D. C., July 31, 1903, " Mr. E. H. Thomas, counsel for Senator Stewart and Messrs. Ralston " and Siddons, stated: ' The question respecting the fees due the attor- " ' neys mentioned in this agreement of the annual payment made and " ' to be made by Mexico pursuant to the late award made at The Hague " ' does not seem to be at the present involved in any controversy, but " ' no waiver or claim to a proper proportion annually of this income " ' is intended and the right thereto is hereby reserved and asserted.'

" Mr. Thomas also wrote to the Secretary of State under date of " July 1st, 1903, that he was authorized on your behalf to request the " Secretary to withhold one-eighth of the Pious Fund. It is unneces- " sary for me to quote from that letter because you undoubtedly have " a copy of it. Mr. Thomas does not say that you make the same claim " that Messrs. Stewart and Ralston and Siddons do with respect to an- " nual payments commencing February 2d, 1903. I will be pleased to " know whether you claim to be entitled to one-eighth of the annual " payments from February 2d, 1903, in perpetuity.

" 2. In his letter on behalf of Senator Stewart and the firm of " Ralston & Siddons of date July 31st, 1903, already mentioned, Mr. " Thomas says that ' valuable services were rendered by said Stewart " ' and the firm of Ralston & Siddons whereby great loss in exchange " ' was avoided and over $23,000 was added to the fund, and for these " ' services my clients claim an allowance from the fund and a lien " ' thereon for the reasonable value of such services in addition to the " ' amount provided in the memorandum of agreement hereinbefore " ' mentioned.'

" Do you consider that this claim has any validity; and do you not " think that under the agreement of Senator Stewart and yourself " with me that it was the duty of yourself and Senator Stewart to " perform the services for which this extra compensation is claimed?

" 3. I should judge from the claims which are made by Mr. " Thomas on your behalf and on behalf of Senator Stewart and Messrs. " Ralston and Siddons that you claim twenty-five per cent of the gross " amount to the Government, and do not concede that $32,859.66 " should be deducted before computing your percentage. I desire to " know whether you claim that your percentage is to be computed

" upon the gross amount received, or whether you concede that the ex-
" penses of the Government are to be first deducted. I furthermore
" desire to know whether you concede that any part of the expenses of
" the Government are payable or may be chargeable under the agree-
" ment of November 15th, 1897, out of the counsel fees.

" 4. I desire to know exactly what your understanding of the ef-
" fect of the agreement of November 15th, 1897, is.

" 5. Lastly. In these matters am I to understand that you and
" Senator Stewart are acting conjointly, or that you are speaking for
" yourself alone? I enclose you a letter written by me to Senator
" Stewart on August 3, 1903, which is self-explanatory.

"As soon as I receive a reply to these inquiries I will write you
" exactly the position that I occupy in the matter. It will be time
" enough then to determine how to reach an adjustment and settlement
" of them. I shall do all in my power to settle expeditiously and in
" justice to you and Senator Stewart. At the same time if it should
" turn out unhappily that we are unable to agree, I hope that the mat-
" ter will be settled without anger or feeling. I shall have none and
" hope that neither you nor Senator Stewart will have any.

" In conclusion, I have but one thing to say and that is that I think
" that your attachment of the fund in the hands of the Secretary of
" State was hardly justified. It is entirely agreeable to me that the
" money should remain there until the controversy is settled, but I do
" not think that you had any right to attach the money there, and if
" you had the legal right to do so, I think the circumstances were such
" that it was uncalled for.

"Permit me to add just another word in answer to some observations
" contained in your letter of September 10th. I do not think I could
" have done more than I did to bring about a settlement of the fees of
" Messrs. McEnerney and Descamps. Shortly after my return from The
" Hague I asked your advice on the subject. You most emphatically
" refused to give me any. I then proposed a mode of settlement which
" you also rejected, namely: that you were to select five or six promi-
" nent attorneys of San Francisco who were agreeable to you and I
" was willing to take one of them and leave the entire matter to his
" judgment and decision. I then proposed Judge Seawell as an arbi-
" trator in the case. You accepted him and when you sent me the
" agreement to be signed you attached to it so many conditions entire-
" ly foreign to the matter which was to be submitted to Judge Seawell
" that I refused to sign it. I could do nothing less. I have no wish, I
" can assure you, to drift into a legal controversy over this business, but
" if such is the outcome they will be to blame who have already in-
" voked the power of the law."

I not unnaturally somewhat lost my temper at this evident attempt to entrap me, and on the following day, September 18th, replied as follows:

" You have so many things to do that I do not wonder that your
" memory goes astray. I gave you *in writing* my appreciation of the
" fees proper to be paid to Chevalier Descamps and Mr. McEnerney.
" You are also in error as to the failure of our efforts to arrange an ar-
" bitration; it was yourself, not I, who broke it off; I believe there is

"another such instance of misrecollection in your letter of the 17th "inst., but these things are of no consequence, and to discuss them "would be a mere waste of time.

"Your telegram to the Secretary, of August 11th, promised that "when you received the documents asked for, *you would make to him* "*and to us a 'complete statement of your position.'* You have long "since received the documents, and I learn that 'your complete state-"'ment' was regarded in Washington as *due* there on the 16th inst., "for which purpose it would have to be mailed in San Francisco by "the 11th. When I wrote my appeal to you for an effort at an amica-"ble settlement, I supposed that if you favored such a course, you "would not probably object to letting me see a copy of the 'complete "'statement' a few days before it could be received from Washington "by mail, and such I supposed to be the meaning of your brief auto-"graph note of the 15th inst. Your letter of the 17th, however, in-"stead of a statement (complete or incomplete) of your own position "is made up of inquiries from me, as to what I claim and how I un-"derstand, &c., as if the writer was unable to tell *your* thoughts until "he had first heard mine! I recognize, of course, the draftsman and "the motive; but having nothing to conceal I will answer his questions "just as if I had fallen into the trap he had so cleverly laid for me. "But neither my appeal for an effort at settlement nor anything I may "do or say must be made an excuse for deferring your promised 'com-"'plete statement' to the Secretary. Your attorney is playing for de-"lay, but I must not be used to aid his game. I am not acting con-"jointly with Senator Stewart; and have no authority from him. my "appeal for an effort at settlement was and is entirely personal, though "if I should be able to agree on one, I am of opinion that Mr. Stewart "would come into the arrangement.

"I know nothing of his claim, and have no interest in, or opinion "about it. The payment to Messrs. McEnerney and Descamps elimi-"nates them from the controversy, reducing it to the question I orig-"inally stated, viz: how much of the sums you choose to pay them "should be charged to Mr. Stewart and myself. My understanding of "the effect of our joint letter of November 15th, 1897 (which you er-"roneously call a contract), I explained sufficiently in my letters of "January 31st and May 18th, last, to which I refer you.

"Perhaps you may remember that in the conclusion of my letter "of May 18th, last, speaking of the actual intent and purpose of our "joint letter of September 15th, 1897, I said: 'It may be suggested "'to you that the words of our letter are broader than the inten-"'tion above named Very likely; but I am speaking of its construc-"'tion as between gentlemen and friends—honorable men on both "'sides.' To the suggestion of this rule of construction I received no "answer, and in such a case silence can only be understood as a refusal. "As the articles of war are the only legislation that I know of which "recognizes or seeks to enforce a standard of morals higher than the "civil law, and they have no application to us, your refusal of the con-"struction suggested by me as above leaves no choice but to claim all "my legal rights. These extend obviously to an eighth of all money "recovered and collected from Mexico, past and future; subject of

"course to any deduction you may be lawfully authorized to make "therefrom. Amicable settlement implies concessions on both sides "and for a settlement I am prepared to make my share of such.

"If you share my desire for such settlement send me some gentle- "man familiar with ordinary business and who understands the case "and desires to promote peace. With such a person I am persuaded I "can agree. To do it by correspondence would be too tedious to be "practicable."

On Sunday, September 27th, I received a scrap of typewritten paper signed "E. P. Mulligan," Secretary, quoted below, and with it a carbon copy of a typewritten letter to the Secretary of State purporting to come from Mr. McEnerney, under date of September 24th, without signature or any other evidence of authenticity. It was a paper for which no one could be held responsible, for it had no evidence of authenticity about it. I think a peasant from the wilds of Connemara should have known better than to send such a paper.

On the following morning I wrote the Archbishop as follows:

"Most Reverend Archbishop:—In your letter to me of September "17th you say: 'As soon as I receive a reply to these inquiries *I will* "'*write you exactly the position* that I occupy in the matter.' My an- "swer to that letter replying to all your inquiries, under date of the "19th inst., must have reached you on the 21st inst. You have never "acknowledged the receipt of that letter, nor—unless the post has mis- "carried—have you written me a word as to your position in the mat- "ter referred to. Permit me to remind you of your promise and claim "its fulfillment.

"On Sunday (27th) I received the following on a scrap of paper:

"'Sep. 25, 1903. Mr. John T. Doyle, Menlo Park, Cal. Dear Sir: "'Enclosed please find copy of the letter of Mr. Garret McEnerney to "'the Secretary of State of date of September 24th, which copy I have "'been requested to forward you. Yours truly, E. P. Mulligan, Sec- "'retary. Kindly acknowledge receipt.'

"The writer does not say whether he writes as your secretary or "as Mr. McEnerney's, nor by whom he has been requested to forward "me the paper enclosed, leaving both you and Mr. McEnerney free to "disavow such a request, and the writer at liberty to forget at whose "request he acted.

"If you mean to be understood that the letter of Mr. McEnerney "to the Secretary of State dated September 24th, 1903, is to be deemed "the full and precise statement of your position, with respect to the "rights of myself and Senator Stewart, promised by you, I think I "am entitled to have it under your own hand, as you promised to fur- "nish it."

The Archbishop's response to this was dated September 30th, and reads as follows:

"I received last evening your letter of the 28th inst. I beg to "reply to it as follows:

"I regret that the letter of my secretary, Reverend P. E. Mulli- "gan, was not more explicit. He should have added that the docu- "ment which was sent with it, was sent to you at my request. The "document was prepared by my attorney, Mr. Garret McEnerney, and

" was sent to me for my approval. I was in the country at the time " and having read it, and approved of it, I requested Father Mulligan, " by letter, to have a copy of it made immediately and sent to you; " similar copies were sent to the Secretary of State and to Mr. Stewart. " The document you received, as prepared by Mr. McEnerney, has my " approval, and is a statement of my position with respect to your " rights, and those of Senator Stewart. I beg of you to receive it as " such."

On October 2d, I replied to this:

" I acknowledge receipt of your letter of September 30th, declar- " ing that that of Mr. McEnerney to the Secretary of State dated Sep- " tember 24th, had been submitted to you for your approval, was read " and was approved by you and that it is a statement of your position " with respect to my rights and those of Senator Stewart, and to be " received as such. To bring this disagreeable business to a close I " must request you to consider any power or authority to do anything " ever given you by me as absolutely revoked, cancelled and an- " nulled."

On October 6th I made my last appeal to the Archbishop as follows:

" Most Reverend Archbishop:—I want some money and would like " to draw so much of the Pious Fund recovery, in the United States " Treasury, as the figures on your recent statement to the Department " show to be undisputably mine, say twenty thousand dollars or so. " This will require your consent, a paper expressing which I enclose for " your signature, if you will give it.

" In this connection I will take leave to remind you that but for " me the Pious Fund would have been irretrievably lost. My telegraph " of March 28th, 1870, just saved it. I, alone, carefully studied, learned " and wrote the history of the fund, invented the form of claim on " which alone we could have recovered, and did recover, in both the " litigations over it, my associate in the first case, unintentionally, " doing his best to make shipwreck of the case. As the Church of " California is clearly indebted to my thought and effort for all that " she has received, or ever will receive from this source, I think I " may claim some consideration from her representative, at least so " far as letting me have so much of my fee as is undisputed. I am " out of pocket several hundred dollars and in debt besides in the " case. The receipt of the money will be quite a convenience to me, " for, wanting it, and unwilling to borrow, I must otherwise sell " property.

" Yours very respectfully, JOHN T. DOYLE.

" Most Reverend P. W. Riordan, Archbishop of San Francisco."

On the 12th of the same month he answered:

" I am in receipt of your letter of October 8th, and beg leave to " answer as follows: If you had permitted the monies recovered in the " Pious Fund suit to be sent to me for disbursement, I should be will- " ing to pay you and Mr. Stewart so much of it as is not in dispute, " but you thought fit, with Mr. Stewart, without consulting me or even " notifying me, to tie them up in the hands of the Government, thus

" casting a suspicion on the honesty of the prelates, or on the solvent " condition of the Church in this State. Mr. Stewart and you seem to " be afraid if the counsel fees were once in my hands you might not " be paid. I can assure you that they would be as safe with me as " they are in the hands of the Government. I do not see any course " to pursue in this matter except to ask those who tied up the monies " to release them.

" I refuse, therefore, to change even partially a condition of things " for which I am not responsible. Mr. Stewart and yourself are alone " to blame in the matter.

" In justice to the Church in California you might have added to " your statement, 'That for all I did for it, I was most generously " paid.' Sincerely yours, P. W. RIORDAN,

"Archbishop of San Francisco."

My reply to this, the last communication between us, was as follows, written October 13th:

" Most Reverend Archbishop:—I acknowledge receipt of your let- " ter of the 12th inst. I have long since realized the truth of the sup- " plement some wit added to the Beatitudes, 'Blessed are those who " 'expect nothing, for they shall not be disappointed.' I did not allow " myself to build on your consent to pay me what you admit to be " due, but thought it only right to give you the opportunity to do " the right thing, if you were so disposed. The case affords a repe- " tition of the farmer's experience, who, after returning from market, " announced to his neighbors, 'My pig did not turn out to weigh as " much as I thought he would, and I never expected he would.'

" I note your expressed willingness, if the money were remitted to " you for distribution, to pay Mr. Stewart and myself so much of it as " is not in dispute; but this is only another instance of the inaccuracy " of your memory, attributable, doubtless, to your many occupations " and cares. Your offer, in Mr. McEnerney's letter to Mr. Secretary " Hay of September 24th, which you told me to consider as a state- " ment of your position in respect to my rights and those of Sen- " ator Stewart, was to pay us this undisputed amount '*in full of* " *all our services and demands to date.*' That is, you would pay what " you admitted to be due us, on condition that we abandon all " claim to all we claimed which you disputed. Most liberal Arch- " bishop, I thank you!

" The stoppage of my money in the hands of the Secretary, was " no imputation on your integrity; but you had informed me of your " intention if you got hold of it, to squander it on undeservers, " which would have remitted me to a law suit against you if I disap- " proved the payment. I told you that if there was to be litigation " over the affair, I preferred to have it in Washington, and to that end " I stopped it there.

" There was no time between your return from The Hague and " the receipt of the money in Washington, that this whole business " might not have been settled by amicable agreement, and it would " have been, had you kept any one of the numerous promises you " made me to come and see me about it. I waited for your coming " several months, and about six weeks before the money was due,

" learned that you had gone off to Chicago for a month! I tried then " to settle with Mr. McEnerney at least, but he—disinterested man— " refused absolutely to speak a word about his fee. The utmost he " would do as to any proposal of mine looking to its ascertainment, was " to submit the suggestion *to you* as coming from me! It was evident " to me that I was trifled with by someone and to end such a stupid " embroglio, I revoked whatever powers you might have from me " about it. I knew when I did it that it was an unpardonable sin, " and your conduct to me ever since has confirmed the opinion.

" I am, Most Reverend Archbishop, yours very respectfully,

" JOHN T. DOYLE,

" Most Reverend P. W. Riordan, D.D., Archbishop of San Francisco."

That is, I believe, the last word that has passed between the Archbishop and myself down to the time of writing these lines (Jan. 22d, 1904). I find, however, that I have inadvertently omitted some communications tending to throw light on the conduct, intentions and motives of parties which in chronological order should have been inserted earlier. I therefore give them here. Their dates will show at what points they should be read in, above. Those between Mr. Stewart on the one hand and the Archbishop and his secretary on the other only became known to me after the event, and are given on information and belief, and are probably incomplete. I hope that the rest will be furnished by Senator Stewart.

On May 18th Mr. Stewart addressed the Archbishop and bishops a formal communication, of which the following is a copy:

" Washington, D. C., May 18th, 1903. Reverend Sirs—Upon pay- " ment to you of the judgment of a tribunal of the permanent court of " arbitration dated October 14th, 1902, had at The Hague in the suit " entitled United States vs. Mexico, you will please pay by New York " draft or otherwise the Citizens' National Bank of Washington City, " District of Columbia, the amount to which I am entitled as attorney " by virtue of the contract existing between myself and you, or either " of you, in order that the money so paid to said bank may be divided " between myself and those with whose payment I am charged. You " are authorized (and I would prefer if convenient to you that you do " so) to instruct the Secretary of State or other officers of the Govern- " ment charged with the disbursement of said award, to prepare and " forward directly to the order of the Citizens' National Bank of Wash- " ington City a draft for the full amount of fees coming to me, thereby " avoiding the delay and expense of double exchange between here and " San Francisco. Very respectfully, WM. M. STEWART."

On May 29th the Archbishop, through his secretary, replied as follows:

" May 29th, 1903. Hon. William M. Stewart, 728 Bond Building, " Washington, D. C. Honorable Dear Sir—The Most Reverend Arch- " bishop is in receipt of your communication of May 18th, 1903, ad- " dressed to himself and the Bishops of Monterey and Sacramento.

" His Grace desires me to say that he will be pleased to afford you " any convenience in the matter of making payment of your fee in the " case of the Pious Fund, and will make that payment according to " your directions. Yours very truly, P. E. MULLIGAN, Secretary."

On June 10th Senator Stewart wrote the Archbishop on other subjects, and saying:

"I also desire to acknowledge receipt of the acknowledgment of "my communication of May 18th and to say that it would be a great "accommodation to me and my associates if you would instruct the "Secretary of State to issue separate warrants, which would save time "and exchange."

On June 20th Mr. Stewart telegraphed to Mr. McEnerney in reply to his of the preceding day (given page 48):

"So far as Ralston and I are concerned, a fee of ten thousand dol- "lars to you is satisfactory without arbitration. We are also willing "that the remaining seven thousand dollars shall be used by Arch- "bishop to pay other attorneys' fees and expenses. When Archbishop "directs deposit in Citizens' Bank, Washington, as requested in our let- "ter to him of May 18th, he may deduct eighty-five hundred dollars "from our half of twenty-five percentum, as our contribution to this "settlement. That will entirely close transaction so far as we are con- "cerned. WM. M. STEWART."

On June 22d Mr. Stewart telegraphed the Archbishop:

"We telegraphed McEnerney on Saturday, accepting his offer to "take ten thousand dollars. We agreed in that despatch that eighty- "five hundred dollars from our half of the twenty-five percentum "should be retained by you to pay the ten thousand and other attor- "neys' fees and expenses. We requested him to ask you to instruct "State Department to pay into the Citizens' National Bank, Wash- "ington, balance of our half of twenty-five percentum after deducting "eighty-five hundred dollars. We regard this as final settlement of "our half of the twenty-five percentum."

On July 14th the Archbishop wrote to Senator Stewart:

"In reply to your communication of July 1st, 1903, permit me to "say that I cannot on my own responsibility, and without consulting "the other beneficiaries of the Pious Fund, give an order for the re- "taining of twelve and a half per cent. thereof for your fee. Besides "it is impossible at this moment to determine the exact amount of your "compensation. There are certain expenses to be met out of the gen- "eral fund before the payment of attorneys' fees, and until the ex- "penses are precisely determined it will be impossible to fix the exact "amount which will be payable to you. This determination shall be "arrived at as soon as possible, and very probably before the Govern- "ment is ready to turn over to us the award. Needless to say I am as "desirous that the whole matter be closed up as speedily as possible.

"Yours truly, P. W. RIORDAN, Archbishop of San Francisco."

On July 20th Mr. Stewart replied by telegraph as follows:

"Letter received. Do not understand difficulty in ascertaining "compensation. Is it not twelve one-half per cent. less eighty-five "hundred dollars, upon amount award, after reimbursing Government "and cost shipment to mint? Your letter seems to suggest new diffi- "culties as to compensation. Please inform exactly your position."

On July 21st the Archbishop appears to have answered this telegram by letter of that date, through his secretary, P. E. Mulligan, as follows:

"In reply to your telegram the Most Reverend Archbishop directs "me to say that two weeks ago he submitted the statement of the ex- "penses in the Pious Fund as received from the State Department at "this office to Mr. Doyle. For some unaccountable reason we have "had no reply from Mr. Doyle. I am writing him again to-day to "setttle this matter up as speedily as possible, and the Archbishop will "immediately make up the total expenses to be deducted from the en- "tire sum before the attorneys' fees are paid.

"Yours truly, P. E. MULLIGAN, Secretary."

It is quite true that on July 2d or 3d I received from the Archbishop the following lines accompanied by an account of four or five pages of expenses incurred by the Government at The Hague, but I do not see how that hindered him from answering Mr. Stewart's enquiry if he wanted to do so:

"San Francisco, July 2d, 1903. Mr. John T. Doyle, Menlo Park. "Dear Sir—The Most Reverend Archbishop directs me to send you "the enclosed statement of expenses. His Grace desires that you take "a copy of it and return the list to this office.

"Yours truly, JNO. D. MAHONEY."

I know nothing of such a letter as Mr. Mulligan says he "was "writing me on July 21st *to settle this matter up as speedily as possi-* "*ble.*" I received no such letter, and if he says he sent such I would like to see a copy of it. I received from him under that date a brief note, on a scrap of paper, requesting return of the Government account of expenses, which request I complied with the following morning, and that is all. It reads as follows:

"San Francisco, July 21st, 1903. Mr. John T. Doyle, Menlo Park, "Cal. Dear Sir—Some days ago the Archbishop sent you a statement "of expenses in the Pious Fund, as received from the State Depart- "ment. His Grace does not know if you received that statement. "Will you please return it to this office if you have made a copy of it?

"Yours truly, P. E. MULLIGAN, Secretary."

On July 28th several telegrams passed between the parties, in what order I do not know. I arrange them in that in which I presume they were despatched, viz:

July 28th Senator Stewart telegraphed to the Archbishop:

"Net amount draft on way from San Francisco to Treasury De- "partment, after paying transportation and all charges, is six hundred "and five thousand six hundred and eighty-eight dollars gold. If paid "at Washington June 14th and converted into gold on that day, at "then price of Mexican dollars fund would have been only five hun- "dred and eighty-two thousand dollars. Our efforts, with kindly co- "operation of Treasury and State Departments, added to the fund over "twenty-three thousand dollars. According to usages of Government, "expenses of arbitrators, amounting to about fourteen thousand, "should be borne by United States, and I expect Congress at next ses- "sion will refund it. Please telegraph to State Department order I "mailed you July seventh. WM. M. STEWART."

On the same date Mr. Stewart telegraphed the Archbishop:

"Your secretary's letter July 21st received but does not give in- "formation requested in my despatch of July 20th. State Department

" cannot comply with your request for payment in San Francisco, but " will disburse fund here. Please telegraph fully at my expense the " position you occupy. WM. M. STEWART."

Mr. Stewart also telegraphed me, at same time, as follows:

" What items in Department's expense account does Archbishop " claim ought to be deducted from our fee? Letter received to-day " says he wrote you on this subject about July seventh.

" WM. M. STEWART."

To which I answered on same day:

" I asked for these items but got no answer. JOHN T. DOYLE."

On the same day the Archbishop telegraphed Senator Stewart:

"As soon as I receive from the Secretary of State the statement of " amount in hand, collected from Mexico, I will prepare and send you " a statement which will fully explain the position which I occupy."

On the following day, July 29th, Mr. Stewart telegraphed the Archbishop as follows:

" Your want of frankness is a disappointment. My acquiescence " in your proposal to divert a large portion of our fee to the payment " of other counsel, employed after the work had been done and the case " was in print, was upon the supposition that it was a final settlement. " Your repudiation of that settlement opens the whole matter, and we " shall claim the entire twelve and one-half per cent. earned by us un- " der our contract, and will take necessary action in local courts to hold " money here and enforce our claim. WM. M. STEWART. 7.14 P.M."

This despatch was received in San Francisco on that day or the next, without doubt. The Archbishop answered by registered letter dated August 3d, but only received (according to Senator Stewart's authority) in Washington on the 10th of the month at 4 P. M. (and hence inferably mailed on the 5th) as follows:

" Hon. Wm. M. Stewart, United States Senator, Washington, D. C.

" Hon. Dear Sir—I am in receipt of your telegram dated Washington, " D. C., 29th ult., which reads as follows:

" 'Archbishop P. W. Riordan, 1100 Franklin street, San Fran- " 'cisco—Your want of frankness is a disappointment. My acquies- " 'cence in your proposal to divert a large portion of our fee to the " 'payment of other counsel, employed, after the work had been done " 'and the case was in print, was upon the supposition that it was a " 'final settlement. Your repudiation of that settlement opens the " 'whole matter, and we shall claim the entire twelve and one-half per " 'cent. earned by us under our contract, and will take necessary " 'action in local courts to hold money here and enforce our claim.

" 'WM. M. STEWART.'

" This is the first time during a long public life, now nearly forty " years, that I have ever been accused of a want of frankness in my " dealings with people and I repudiate the accusation as having no " foundation in fact, and which should not have been made by a gen- " tleman holding your position against one holding mine until you " were sure that it could be sustained by facts. Your acquiescence in " the fee which I was to pay Mr. McEnerney was absolute and there " was no supposition that it could be considered as a final settlement.

" You asked me in your letter to do something of a most unbusiness-
" like character, namely, to instruct the Secretary of State to hold back,
" subject to your order, a certain portion of the award, which I should
" not have been asked to do before I had received your statement and
" the acquiescence in it of your assigns, Messrs. Ralston and Siddons
" and Mr. Kapler, and I had an opportunity of comparing your state-
" ment with the itemized account of expense incurred by the Govern-
" ment in the conduct of the trial, a portion of which, to say the least,
" should, in my judgment, be charged to counsel and not to me. But
" enough, now that you have signified your desire to take action in
" local courts, to hold the money in Washington and enforce what you
" call your claim, it is not my business to offer any advice or sugges-
" tion. When the time comes to make our side of the question known
" in the courts which you select we shall not refrain from presenting
" our side of the case, though most reluctant to have the great historic
" case of the Pious Fund meet with so ignoble an ending.

" I merely state, therefore, that until I receive an apology for your
" unfounded and ungentlemanly action contained in your telegram I
" must refuse to hold any correspondence with you. All communica-
" tions on this subject or on any other connected with the Pious Fund
" which you may wish to make you will send to my attorney, Mr. Gar-
" rett W. McEnerney, Nevada Block, whom I have appointed to repre-
" sent me in these matters. I remain, sincerely yours,

" P. W. RIORDAN, Archbishop of San Francisco."

That ends the correspondence. My part of it is, I believe, complete; that of Senator Stewart is also, so far as I am able to furnish it. The two following despatches between the State Department and the Archbishop should be read in the same connection.

On August 7th the State Department telegraphed Archbishop Riordan as follows:

" State Department is especially desirous of avoiding notoriety in
" final adjustment of Pious Fund award on account of its international
" and historic character. Counsel for Stewart and Doyle suggests that
" as you receive sixty-five per cent., as you direct they ask that they
" receive their twenty-five per cent., less thirty thousand dollars, and
" that last named sum shall remain in hands of Department for further
" determination. Would be pleased if matter could be arranged by
" telegraph, as solicitor for Department sails for The Hague on August
" 14th. In view of your letter to Senator Stewart dated January 14th
" and telegram of Mr. McEnerney to him dated January 19th a friendly
" adjustment seems within reach."

To which the Archbishop replied on August 11th as follows:

" I am anxious to avoid contentions and appreciate your feeling. I
" have not received from Doyle or Stewart statement of their de-
" mands. I must await receipt of statement of account and docu-
" ments asked for in my telegram of fifth. *Thirty thousand dollars*
" *does not cover matters which must be adjusted.* I am not willing to
" leave any matter for later decision. I desire that all shall be
" closed at one time. When I receive documents asked for I will
" make to you or to them a complete statement of my position. If

" Doyle and Stewart desire adjustment, McEnerney is authorized to " represent me. The matter cannot be arranged by telegraph. Please " send undisputed sixty-five per cent. as requested."

It may be thought that my opinion that Mr. McEnerney, because of his ignorance of any language but English, could be of no service at The Hague, though acquiesced in by the Archbishop, was too severe; but, as all the documents in the case were in either French, Spanish, German or Italian, I cannot admit this, and in support of my opinion, I may point out a blunder of his, arising from that very defect. It was this: He had mentioned that the first contributions to the Missions were left in the hands of the donors, at interest. One of these donors, however, became insolvent, and his promised subscription of ten thousand dollars was lost. This caused Father Salvatierra to propose calling in the various sums subscribed and investing them in rural property; a suggestion which the Provincial Council of the society approved. One member, however, expressed doubts whether this course would be in entire consonance with the rules of their order. On this the General (such is the title of the chief officer of the Jesuits) was written to, who decided promptly that there was nothing in the rules of the order which forbid such a course, and referred to precedents in support of his opinion. On this the practice was adopted. The story is told minutely in Venegas, vol. 2, p. 233 *et seq.*, and is copied at length in the extracts from historical works which I filed with my brief history of the Fund. Mr. McEnerney will find it in the record of the old case, commencing on the fifth line of page 190 of the volume containing that old record, with which he was furnished before leaving San Francisco. It was, however, in Spanish, and, so far as he was concerned, might, of course, as well have been in Chinese or Choctaw. Relying, however, on the English version of the argument of Don Manuel de Aspiros, which contains a somewhat erroneous account of the matter, and perhaps misunderstanding some of its expressions, he supposed he had here discovered a formal *permission of the Spanish Government to make this change, and hold property of this character*, and, on some theory of his own, ascribing exaggerated importance to this supposed fact, he elevates its occurrence to *an epoch* in the history of the Fund. (See his speech in the *proces verbal*, pp. 44–45.) Although in this instance probably harmless, a blunder of this kind might easily have been very costly. It illustrates the justice of my objection and serves to exhibit Mr. McEnerney's elaborate display of learning in a ridiculous light. I sent Venegas' history to The Hague for use on the argument if needed, and had Mr. McEnerney but asked his youngest associate he would, without doubt, been shown the original story and had it translated for him besides.

When first I read Mr. McEnerney's speech in the *proces verbal* I experienced only a feeling of disappointment. I could not and did not expect it to prove a contribution of any serious value to our success, but I did hope for an address distinctly relevant to the questions before the court and creditable to its author, in whom I felt a strong interest. This disappointment will probably be apparent to one who reads my letter to the Archbishop of January 31st, 1903, wherein I

endeavored to speak well of it, so far as possible, without violating the truth. I was willing to allow him five thousand dollars for it, thus ranking him with the eminent men who composed the court, which I considered a very high compliment. This was not because I failed to discover the deficiencies of his performance, but because I regarded him as a friend, and was ignorant that he had exchanged that position for that of an advocate, secretly retained against me, in the next stage of the case, and who had already taken my place in it, in the confidence of my client, and been assured of a large fee in it at my expense. Whether his conduct in this particular was consistent with professional ethics, let others judge. It was long after this that I learned of his mischievous and indefensible advice at The Hague on the question of currency; and in view of these changed conditions I feel that I owe it to myself to speak plainly on this subject. If it be considered that I am compromised by the offered allowance of five thousand dollars, be it so; and let us be charged with that sum. I care not for the money; but let the allowance be put on the ground that I am thus compromised; not that in the judgment of any competent and honorable man he has deserved it, for he has not.

This statement was intended for presentation to the Secretary of State, on the supposition that he would himself undertake the investigation that must necessarily precede the distribution of the award and it was intended in part also to show through whose action such an unseemly controversy arose. The probability that the matter may now take a different course makes it, I think, needful to insert a copy of our contract of December, 1889, and an explanation of the construction Mr. McEnerney and the Archbishop put on it. The contract is as follows:

"Memorandum of agreement between the Most Reverend Patrick " W. Riordan, Archbishop of San Francisco, a corporation sole, and " the Right Reverend Francis Mora, Bishop of Monterey, also a corpor- " ation sole, for themselves and their successors, and acting on behalf " of the Roman Catholic Church of California, of the one part, and " John T. Doyle and William M. Stewart, counsellors of law, of the " other part, made the 24th day of December, 1889.

"The Republic of Mexico being indebted to the Roman Catholic " Church of California in a sum of about eight hundred thousand dol- " lars, for the unpaid installments of the purchase price of the proper- " ties of the Pious Fund of the Californias, which have accrued since " the award of the American and Mexican Mixed Commission, created " by the convention between Mexico and the United States, of July " 4th, 1868, the aforesaid prelates, successors respectively of the Most " Reverend Joseph S. Alemany, and of the Right Reverend Thadeus " Amat, have employed and retained the said John T. Doyle and " William M. Stewart, professionally to endeavour to secure payment " of the money so due to the Church of California as aforesaid, by " legal proceedings, diplomatic action, or other lawful means, and have " constituted them and each of them their attorneys for that purpose.

"It is agreed that they are not, nor is either of them, to make any " charge or demand any compensation for his services except out of " the moneys or property to be actually collected and recovered from

" Mexico, and of all that shall be collected and received, whether in " money or valuables, and whether received as full or partial pay- " ment, or in compromise of the claim, each of the said attorneys is to " receive one-eighth part, as compensation for his services and any " disbursement he may make, in or about the business. It is also " understood that this contract is with each of said attorneys severally " for his personal services and for his individual compensation; if they " deem it best to employ associate counsel, they may do so, but at their " own expense. If either of them should die before the recovery of " the money, or settlement of the claim, no right to continue the work " and earn the fee shall survive to the personal representatives of said " deceased, but in the event last supposed, the eighth part of the sums " collected, that would have gone to the attorney so deceased, shall be " at the absolute disposal of the prelates, for the employment of one or " more other attorneys or counsel in place of the one so deceased. If " after payment of counsel or assistance so employed, there should " remain any balance of the eighth so appropriated, the prelates will " pay it over to the personal representatives of the deceased attorney.

" In witness whereof, the said several parties have hereto set " their hands and the corporate seals of the said corporations the day " and year above written.

" PATRICK W. RIORDAN,
" Roman Catholic Archbishop of San Francisco.
" Witnesses: George Montgomery.
Patrick Blake. [L. S.]

" FRANCIS MORA,
" Roman Catholic Bishop of Monterey.
" Witnesses: P. T. Gavin.
James W. Allen." [L. S.]

We recovered a judgment against Mexico for $1,420,682.00, payable in Mexican currency, said to be for thirty-three years' interest at $43,050.99 per annum on the capital involved, to be paid as provided in the protocol, viz: eight months after decision; and further, that Mexico should pay on the second of February, 1903, and on the same day in each succeeding year thereafter, the same sum, viz: $43,050.99. Mexican currency was worth at the time less than fifty cents on the dollar.

The annual interest due February 2d, 1903, was paid when due, and produced in the U. S. Treasury $16,416.00. The main award was also paid by Mexico as provided by the protocol, and produced in the U. S. Treasury $605,688.65. The expenses of The Hague arbitration, as incurred and paid by the United States, amounted in the aggregate to $32,859.66.

The Archbishop claims that by our contract we are only entitled to participate in twenty years' installments of interest. That we have to pay the whole expenses of the Hague Tribunal, together with a fee of $5,000 to Mr. Descamps, another of $10,000 to Mr. McEnerney, besides $1,500 more to the latter for traveling expenses, and a thousand or so additional for a translator he employed and for the services of a stenographer.

On these lines he made out an account which he sent to the State Department on the 24th of September, as follows:

20/33 of $605,688.65 are $361,084.03, twenty-five per cent. of which amounts to			$91,771 00
Deduct Government expenses at The Hague	$32,859 66		
Chevalier Descamps' fee	5,000 00		
Mr. McEnerney's fee	10,000 00		
" " expenses	1,500 00		
" " translator and stenographer	1,000 00	—	50,357 66
Leaving due to Messrs. Doyle and Stewart			$41,411 34

Thus, after taking out of what even he is forced to admit to be ours, all the sums he or his attorney could think of, he still left due us $41,411.34, which he offers, *if we will let him draw the whole award*, to pay us *in full of all our services and demands*. We have not accepted that offer. Mr Wilson and the representatives of Mr. Phillips having claimed ten per cent. of the award under a contract with them in 1873, that amount was also withheld by the Department at their request. This left sixty-five per cent. of the principal award besides the whole of the sum paid February 2d, 1903, all of which has been turned over to the Archbishop. Our undisputed $41,411.34 having been paid to us, leaves in the U. S. Treasury, say, $169,474.69 for ultimate distribution.

(These figures are subject to correction, as I have not an official statement. They are, however, sufficiently accurate for present discussion.)

I disclaim any intention to make any remarks of a personal character regarding the Archbishop. I consider, however, that his correspondence and conduct in this business are just as much open to criticism as those of Monarchs, Ministers of State or even Presidents. From them it appears, as I think, by him any excuse is considered good enough for doing what he wants to do or for omitting what he does not. Thus, while admitting that Mr. McEnerney had no chance of being of any service to the cause at The Hague, he takes him over to Europe to aid him in selecting an umpire or in chosing local counsel, because his judgment of men was so fine—an absolutely frivolous excuse. And again, after agreeing that a college professor was not the sort of person we wanted at The Hague, he proceeds, when he reaches there, to engage Chevalier Descamps, who is nothing but a college professor, who has had no forensic experience, is ignorant of elementary law, and whose discourse in the case is suppressed by its author. The excuse given for doing this is his knowledge of the *Canon law*—a code never once referred to in the case. Another instance of a kindred sort is his reckless assertion in his letter of February 14th, in the matter in question he *acted by the advice* of Senator Stewart. But he had no sooner put these words on paper than he perceived that in his indifference to excuses he had written an actual falsehood; so, to correct it, he adds "or to put it more correctly, Mr. "Stewart was of the opinion that I acted judiciously, for the best in- "terests of the case." That is to say, that he told Mr. Stewart what he had done, and the Senator was too polite to censure an act that was past remedy!

His health is continually referred to in this connection, and in fact the extent in which it figures among his excuses would make one who did not know him believe that he was a wretched invalid instead of a full-sized, well-muscled and vigorous-looking man. His health, too, is of such peculiar versatility that, when too unwell to travel thirty-two miles to Menlo Park to keep an engagement, concerning which he was so very anxious, as he says he was, yet without fear he starts for Los Angeles, four hundred miles off, or for Chicago, nearly two thousand. So, when well enough to come here to attend to some college affair, or to accept an invitation to lunch, he is not well enough to drive a few rods further to settle the Pious Fund business, about which he is so anxious. The feebleness and inaccuracy of his memory is illustrated in the instances I have pointed out in the course of this statement and in others that could be referred to.

With this I close this lengthy statement, postponing any argument on the facts disclosed until such shall be in order. A part of it goes to show and does show how this unseemly controversy comes here for decision. As to this, the correspondence and conduct of the parties establishes, I think, clearly that the plan of the Archbishop and his present counsel has been, ever since their return from The Hague, to avoid any explanation with Mr. Stewart or me, or any discussion of the question of fees, lest it should lead to a premature disclosure of the perverted construction they designed to put on the contract of December, 1889. To that end the Archbishop studiously shunned me, while affecting all the time to be anxious to meet me. Mr. McEnerney, having first come to a satisfactory understanding with the Archbishop on the subject of his own fee, refused thereafter to talk with any of us on the subject. That question, and the newly-found construction of our contract, were to be withheld from Mr. Stewart and me until in the ordinary course of events the whole award should have come into the hands of the Archbishop, when, after first appropriating nearly forty per cent. of our covenanted fees to his own use, and unjustly deducting from the remainder some $50,000.00 for expenses, he would be prepared to pay us the insignificant remainder if we would accept it in full compensation for our services and moneys disbursed during the thirteen years of effort to collect from Mexico. If we declined this magnanimous proposal we were to be remitted for our money to a law suit in California likely to last before a final decision not less than five years and possibly as many as seven.

It is perhaps well to say that, errors in computation—such as considering only twenty installments of interest due in 1889, when there were in fact twenty-one, and saddling the whole disbursement account on a small percentage of the recovery—are passed unnoticed here because it will be time enough to look to such details after the principle on which the account should be stated shall have been established.

JOHN T. DOYLE.

Subscribed and sworn to before me this
12th day of February, 1904.
JAS G. MASON,
Notary Public in and for San Mateo County.